

10.60 – Review of Faculty Grievances v021219-2 [includes FS Faculty Affairs Committee amendments, approved by the Faculty Senate on March 7, 2019]

PART 1: PURPOSE AND OVERVIEW

- A. **Redress of Grievances:** This rule is adopted pursuant to the authority granted in [RPM 6.00](#) to provide Faculty with an objective and expeditious process to seek review of their grievances relating to workplace issues. The rule (*at Part 9. F.*) also prohibits retaliation against those who utilize this rule to file a grievance or who are required to participate in proceedings authorized by this rule.
- B. **Informal Pre-Grievance Dispute Resolution:** Faculty and academic administrators alike are strongly recommended to pursue informal discussions, mediation or alternative forms of [dispute resolution services available on campus](#) to resolve contested matters at the lowest administrative level possible, and avoid escalation of a dispute and polarization of the Parties' positions. Failing informal resolution, this rule provides the rules and procedures by which a formal fact finding hearing is conducted by a Hearing Panel comprised of faculty peers, followed by a final decision by the provost.
- C. **Establishment of Faculty Grievance Review Board:** The Faculty Grievance Review Board (FGRB) is established to process the requests for formal grievance hearings. This rule describes the composition and election of members of the FGRB, the FGRB's functions and authority; the requirements to initiate a grievance, and if not dismissed by the FGRB after preliminary review, the rules and procedures relating to the formal hearing process, which culminates with the FGRB issuing findings of fact supported by a preponderance of the evidence, and a final decision by the provost.
- D. **Overview of Rule:** This rule is divided into the following Parts:

PART 1: PURPOSE AND OVERVIEW

PART 2: DEFINITIONS

PART 3: FGRB COMPOSITION; ELECTION OF MEMBERS; TERMS OF SERVICE

PART 4: FGRB FUNCTIONS

PART 5: ADMINISTRATIVE SUPPORT FOR THE FGRB

PART 6: PARTIES' RIGHT TO FACULTY CONSULTANT

PART 7: PROCEDURES TO INITIATE GRIEVANCE

PART 8: PRELIMINARY REVIEW BY THE FGRB

PART 9: RULES PERTAINING TO GRIEVANCES (Time Deadlines; Communications; Confidentiality; Elimination of Potential Bias; Preservation of Grievance Record; Prohibited Retaliation; Requests to Stay Grievance Proceedings)

PART 10: PRE-HEARING PROTOCOLS (Designation of Hearing Panel and Chair; COI Avoidance; Setting the Hearing Date/Time/Location; Submissions by Parties; Facilitation of Witness Testimony)

PART 11: HEARING PROCEDURES

PART 12: FINDINGS OF FACT SUPPORTED BY EVIDENCE AND RECOMMENDATIONS

PART 13: FINAL DECISION

PART 2: DEFINITIONS

Terms defined for purposes of this rule are listed below, and will be capitalized throughout, to indicate it is a defined term.

- A. **Day:** Means Monday through Friday, excluding official university holidays and closures.
- B. **Faculty:** Any full- or part-time tenured, tenure track, or regular non-tenure track faculty member who alleges specific facts indicating that they have been personally and adversely affected by a decision, action, or inaction. Faculty employment status will be determined by Human Resource Services when requested by the FGRB Co-Chair(s).

- C. **Faculty Consultant:** A faculty member who provides consultation support in the pre-grievance, pre-hearing and formal hearing steps to the faculty grievance process.
- D. **FGRB Co-Chairs:** Two members of the FGRB selected by the membership to lead the FGRB in administering this rule.
- E. **Grievance Record:** The documentation in any format (e.g. e-mail) relating to the grievance, including but not limited to notifications setting the date, time, and location of the formal hearing; written procedural guidance provided by the FGRB Co-Chair(s) or Hearing Panel to the Parties, if any; all evidence submitted by the Parties at the formal hearing, labeled as to which Party submitted it; the recordings of the formal hearing, the findings of fact and recommendations, and the Provost's final decision.
- F. **Grievant:** A Faculty member, or any group of Faculty, alleging a grievable claim.
- G. **Hearing Panel:** Three members of the FGRB (2 faculty and 1 department head), designated by the FGRB Co-Chairs to conduct the formal hearing.
- H. **Hearing Panel Chair:** A member of the three member Hearing Panel designated by the FGRB Co-Chairs to chair the formal hearing.
- I. **Party:** The individual(s) who filed the grievance and any person or unit named or joined as a Respondent.
- J. **Respondent:** Any person or unit whose action or inaction gave rise to the grievance.

PART 3: FGRB COMPOSITION; ELECTION OF MEMBERS; TERMS OF SERVICE

- A. **Membership:** The Faculty Grievance Review Board (FGRB) will consist of a total of 13 members, with 9 faculty members elected from the faculty at large (6 tenured or tenure-track faculty, 3 college regular non-tenure track faculty), and 4 department heads.
- B. **Elections:** Elections will be held during the fall semester with the term of service to begin the first Day faculty report the following spring semester. If for some reason service cannot start at that time, regardless of when it does start, the end date of service will not change.
 1. Nominees for the at-large positions will result from a general announcement calling for nominees, including self-nominations. The at-large members will not be a department head, associate dean, or dean on interim or permanent basis. The faculty will elect the at-large member(s) from the complete list of nominees.
 2. After a general call throughout the NMSU system for nominations for the department head positions, the provost will forward at least two nominations for each vacant position to the Faculty Senate who will elect the member.
 3. Nominations will be made such that no Faculty Senate electing group (See Faculty Senate Constitution) will have more than three members on the FGRB and no department will have more than one.
 4. Elected members will serve a three-year term and will serve no more than two consecutive, 3-year elected terms, with the exception of the provisions in Section C. below.
 5. Elected members will attend orientation training within a month after beginning their FGRB service.
- C. **Continuance of Service:** The members will continue to serve on the FGRB until member's replacement has been elected, notwithstanding the limitation on service to two consecutive three-year terms.
- D. **Service During Summer Months or Other Period of FGRB Member Unavailability:** If there are no FGRB members available to convene a Hearing Panel during the summer months, or any other time, the FGRB Co-Chair(s) and the provost will coordinate to designate similarly representative and neutral members of faculty to serve as alternate hearing officials, in lieu of elected FGRB members for purposes of a specific hearing.

E. Vacancies; Interim Appointments:

1. A FGRB member may resign by providing written notice to the FGRB Co-Chairs, with copy to the Faculty Senate Chair.
2. Upon a vacancy created by an at-large FGRB member's resignation, the Faculty Senate Chair will announce the vacancy system-wide and ask interested and qualified Faculty to submit their names. The Faculty Senate Chair will select from these names an individual to serve.
3. Upon a vacancy created by a Department Head FGRB member's resignation, the provost will submit at least two nominees to the Faculty Senate Chair. The Faculty Senate Chair will select from these names an individual to serve.
4. The replacement member will serve for the remainder of the elected member's term.
5. Replacement member's service will not be counted as part of the two-term limit.

PART 4: FGRB FUNCTIONS

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- A. **General Role and Responsibility:** The FGRB facilitates the hearing of formal grievances filed by Faculty. The FGRB may decline to accept a grievance or may refer the matter for formal hearing by an objective Hearing Panel. (*See Part 8*) Based on issues that have come before it, the FGRB is also authorized to issue recommendations to the provost or to the Faculty Senate for changes in policy, rules or procedures to improve work conditions or to effectuate equity in the Faculty work environment.
 - B. **Election of FGRB Co-Chairs:** Each year, the FGRB will elect one FGRB Co-Chair, who may serve more than one term. The goal by electing one per year is that each year, one of the FGRB Co-Chairs will have prior experience, to assist in maintaining the continuity of service provided by the FGRB.
 - C. **Authority of Co-Chairs:** Co-chairs vote as any other member of the FGRB. The FGRB Co-Chairs facilitate the processing of formal Faculty grievances in accordance with this rule. They are authorized to communicate on behalf of the full FGRB consistent with the position of the majority, or as the FGRB delegates to them for procedural tasks.
 - D. **Meetings:** For all meetings of the FGRB, a minimum of 24 hours e-mail or written notice will be given to all members of the FGRB. For official actions taken by the FGRB (e.g. accepting or declining to accept a grievance), a minimum of a quorum of seven (7) is needed. To facilitate meetings of the FGRB, members may participate telephonically or by other electronic/digital means, provided that all members may be heard on the call and confidentiality is maintained. In addition to the meetings to review new grievances, the FGRB Co-Chairs may convene regular or standing meetings of the full FGRB for the conduct of its business.
 - E. **Operational Guidelines; Orientation and Training:** The FGRB may develop guidelines for its operations and the formal hearing not inconsistent with this rule, including new member orientation and refresher training for current members. Any hearing guidelines that will affect the formal hearing process must be provided to the Parties upon the filing of a grievance.
 - F. **Attendance at FGRB Orientation and Training Sessions:** Each FGRB member must participate in an orientation session after election to the FGRB and any refresher training recommended by the FGRB Co-Chairs or the provost. If the FGRB Co-Chairs determine that an FGRB member is neglecting their duties (would include not attending training or not hearing cases), that they may bring this to the attention of the member's supervisor.
 - G. **Preliminary Review/Summary Disposition:** After receipt of a formal grievance, the FGRB will meet to determine whether it will accept the grievance for formal hearing. In making its decision, the FGRB will consider the guidance relating to subject matter below in *Part 8. B. below*, the employment status of the Grievant (*See Part 2 B. above*), the timeliness (*See Part 7. A. below*), and if the Grievant has followed the

prescribed format (*See Part 7. B.*). If the FGRB determines that the subject matter or relief sought are outside the purview of this rule and the FGRB's authority, it will notify the Grievant that the grievance will not proceed to formal hearing. If the grievance otherwise states a viable grievance but is not in the requisite format, the FGRB may provide the Grievant an additional two weeks to re-submit it before it will be processed for hearing.

- H. **Formal Grievance Hearings:** When the FGRB has accepted a grievance, the FGRB Co-Chairs will designate three FGRB members (2 faculty, 1 department head) to convene as a Hearing Panel to conduct a fact finding hearing. The Hearing Panel members will be selected to provide appropriate peer representation, in terms of faculty status and familiarity with the type of work performed, to the extent possible based on scheduling availability and subject to the constraints of Part 9. D. 3. The Hearing Panel will issue findings of fact supported by a preponderance of evidence. (*See Part 12*)
- I. **Periodic Policy Review:** The FGRB will recommend revisions to this rule as necessary for the efficient processing and consideration of Faculty grievances.
- J. **Attendance at Hearing:** The FGRB is authorized to issue formal notices to named witnesses who are NMSU employees or retirees, requesting their appearance before the Hearing Panel. If such formal request is not honored, the FGRB will seek assistance from executive administration and the AVP Human Resource Services. Additionally, in the event there are insufficient number of FGRB members available to convene a Hearing Panel, academic administration will assist. (*See Part 9. A. below*)

PART 5: ADMINISTRATIVE SUPPORT FOR THE FGRB

The Faculty Senate Chair, or their designee, and the Assistant Vice President of Human Resource Services will coordinate to provide the FGRB with the necessary clerical, administrative, and technical support it requires, which will include guidance relating to applicable time deadlines and other procedural issues that may arise.

PART 6: PARTIES' RIGHT TO FACULTY CONSULTANT

Either Party may enlist the aid of a Faculty Consultant whose role will be to provide guidance directly to the Party. The role of Faculty Consultant does not include actively advocating on behalf of the Party in official communications or at the formal hearing. It is the responsibility of the Party to keep the Faculty Consultant informed. If a Party requests assistance in obtaining a Faculty Consultant, the Faculty Senate Chair or their designee will appoint a senior faculty member to serve in that capacity.

PART 7: PROCEDURES TO INITIATE GRIEVANCE

- A. **Timing:** Failing resolution through alternative dispute resolution, 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 may be waived by the FGRB 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, or other good faith extenuating circumstance.
- B. **Grievance Format:**
1. The grievance will be in memo format, with the subject line indicating that it is a Faculty grievance and the Respondent(s) named therein (e.g. "SUBJECT: Faculty grievance versus Respondents ABC and GHI").
 2. The grievance memo, limited to 5 pages excluding attachments, will:
 - a. Identify the Grievant(s) by name, job title, phone number, mailing address, NMSU e-mail address and the method by which they may be readily contacted;
 - b. Identify the Respondent(s) by name, job title, phone number, and e-mail address;
 - c. Identify the issue(s) in dispute, including the specific allegations against each named Respondent;
 - d. Identify any individuals with personal knowledge regarding the issues in dispute, including contact information for the individual;

- e. Identify efforts made to date to resolve dispute;
 - f. Outline the points in support of the Grievant's position, referencing any supporting documentation;
 - g. State the desired outcome of the grievance;
 - h. 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.";
 - i. Contain the signature of the Grievant with the date signed; and
 - j. Attach or reference any supporting documentation;
- C. **Notice:** If after preliminary review, the FGRB accepts the grievance for hearing, the Grievant will electronically send a copy of the grievance to:
- 1. The named Respondent(s);
 - 2. Grievant's and Respondent's supervisors.

PART 8: PRELIMINARY REVIEW BY THE FGRB

- A. **Review by Quorum:** Within ten (10) Days of receipt of the grievance, at least a quorum of the FGRB will convene to review the grievance and determine whether or not the Grievant has standing (*See Part 2. B. above*), has filed timely (*See Part 7 A. above*) regarding an issue that may be grieved under this rule. (*See Section Part 8 B. 2. below*)
- B. **Decision to Accept or Decline Grievance:** The FGRB will vote to either accept the grievance for formal hearing or to decline to hear the matter. Guidance is provided below regarding the types of issues the FGRB will accept and submit to a Hearing Panel.
- 1. **Subject Matters within FGRB's Purview:** The FGRB may hear matters involving alleged violation of university policy, rules or procedures or appeals from administrative decisions and other administrative actions perceived to be unfair or unprofessional, provided university policy, rules or procedures do not otherwise provide or prohibit a dispute resolution process.
 - 2. **Subject Matters Outside of FGRB's Purview:** There are several areas outside the scope of authority of the FGRB; when grievances alleging the following types of matters are filed, the FGRB will not accept the grievance and will notify the Parties that the grievance will not be heard.
 - a. Job direction, including coaching, counseling, and documented warnings provided for purpose of improving work performance;
 - b. Non-renewal of annual employment contract during probationary period of a tenure-track Faculty member, unless a violation of policy, rule or procedure, or the letter of hire is alleged;
 - c. The outcome of the promotion and tenure process, unless a policy or procedural violation is alleged to have materially affected the outcome;
 - d. Disputed matters that fall within the jurisdiction of another NMSU unit or hearing body, including but not limited to:
 - i. Involuntary termination for cause ([ARP 10.50 Faculty Alleged Misconduct Investigation, Discipline and Appeals Processes](#))
 - ii. Complaints of unlawful discrimination ([ARP 3.25 Discrimination, Harassment and Sexual Misconduct on Campus](#))
 - iii. Intellectual property disputes ([ARP 11.05 Intellectual Property Management](#))
 - iv. Freedom of Expression Conflict ([ARP 3.63 – Freedom of Expression](#)) requires informal resolution prior to filing a grievance;
 - v. Disputes involving animals on campus (ARP 3.45 – Assistive, Service and Companion Animals on University Premises); [ARP 3.45 – Assistive, Service and Companion Animals on University Premises](#);
 - vi. Disputes involving hostile misconduct in the workplace ([ARP3.80-Non-Discriminatory Bullying, Hazing and Hostile Misconduct](#))

- e. Reassignment or transfer, provided no change in tenure home, loss in pay or Faculty rank, or other violation of policy, rule or procedure, or letter of hire is alleged;
 - f. Changes in status of an academic administration position, consistent with policy, rules and procedures (See [RPM 6.00](#), [ARP 7.35 Faculty Compensation – Faculty Retreat Rights](#)) and with letters of hire;
 - g. The substance of a policy, rule or procedure, including established practices, unless it has an alleged unfair impact;
 - h. A resignation that has been sent and received;
 - i. Issues that could have been raised in a previous grievance submitted to the FGRB involving the same Parties and arising from the same or substantially similar facts, unless new evidence is submitted that is found to be substantive. This exclusion is intended to bar duplicative claims or claims that could have been included in the prior grievance; and
 - j. Grievances filed past the time limit, unless authorized by a waiver of the time deadline.
- C. **Notice of Acceptance/Declination to Parties:** If the grievance is declined in accordance with the above, the FGRB Co-Chair(s) will issue official correspondence to the Parties on behalf of the FGRB expressing the basis/es for the decision of the majority of the FGRB. Absent a time extension, a decision that the grievance has been declined should be sent within five (5) Days from the date the FGRB met and made its decision.

PART 9: RULES PERTAINING TO GRIEVANCES

- A. **Time Deadlines:** Faculty grievances should be processed as expeditiously as possible.
- 1. Requests for extensions of time may submitted in writing by any Party or FGRB official involved in the grievance process. Such requests must justify the request, copy the Parties and be addressed to the FGRB. The FGRB will grant reasonable requests for extension and notify the Parties about the new deadline.
 - 2. If the personnel necessary for the hearing are not mutually available on the dates and times proposed for the hearing, the Co-Chair(s) may seek the assistance of the provost or the AVP HRS to resolve scheduling conflicts, or time deadlines may be extended, with notice to the Parties.
- B. **Communications:** Neither party nor their Faculty Consultant may communicate in any form (e.g. verbal, written, email, text, social media) with the FGRB officials about the merits of the grievance. They may seek procedural guidance from the FGRB Co-Chair(s) or Hearing Panel Chair as needed, who will document the communications for the record. Substantive communications which inadvertently happen will be documented via memo for the record and shared with the relevant FGRB officials or Parties as appropriate. Under no circumstances will the involved Parties, witnesses or representatives or Faculty Consultants communicate with the provost or other designated final decision maker about the grievance.
- C. **Confidentiality:** Grievances relate to sensitive personnel issues and all NMSU employees and students who acquire knowledge or information relating to a grievance are asked to maintain confidentiality. The outcome of terms of any negotiated mutual agreement resolving a grievance will be only be divulged to personnel with a “need to know” and whose assistance is required in implementing the terms of the agreement.
- D. **Elimination of Potential Bias:** The FGRB Co-Chair(s) and the Hearing Panel members assigned to the grievance must be able to serve impartially and fairly. The following guidelines are provided to assist the FGRB and the Parties to work through claims of alleged bias or conflict of interest, ideally in the pre-hearing stage.
- 1. Any FGRB member selected to serve as a member of the Hearing Panel must disclose actual or potential conflicts of interest immediately, or as soon as it is realized, in order that it may be resolved prior to convening the hearing.
 - 2. A Party, including their representative or Faculty Consultant, must also disclose actual or potential conflicts of interest as soon as it is realized so it may be resolved prior to convening the hearing.
 - 3. Under no circumstances will a FGRB Hearing Panel member participate in a hearing convened to hear a grievance involving a Party with whom the member has a familial, personal, or close professional

relationship. A FGRB member will not hear a matter involving Faculty from their own academic department.

4. 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 will not be automatic; either the member will recuse voluntarily or the FGRB Co- Chairs will issue a decision in writing, based upon the specific facts of each case.
5. If the Grievant, Respondent, or a witness has had prior contact with a Hearing Panel member, disqualification from service will not be automatic; either the member will recuse voluntarily or a the FGRB Co-Chair(s) will issue a decision in writing, based upon the specific facts of each case.
6. 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 FGRB member, the resolution will be either voluntary recusal by the individual alleged to have the conflict or by substitution of a different individual by the appropriate FGRB Co- Chair.

E. Preservation of Grievance Record:

1. At the conclusion of the hearing, the FGRB members involved with the grievance will forward official correspondence pertaining to the grievance to the appropriate FGRB Co-Chair.
2. The Hearing Panel Chair, with the assistance from Office of Human Resource Services, Employee and Labor Relations (HRS-ELR) will transmit the formal hearing record to the appropriate FGRB Co-Chair, who will compile the complete Grievance Record and forward to the office of the final decision maker.
3. The final decision maker will ensure that HRS-ELR receives the complete Grievance Record for storage and maintenance in accordance with the university's records retention policies, once the final decision has been issued to the Parties.
4. The Grievance Record will not be filed in the official personnel file. The Grievance Record will be stored in a grievance file with the Office of Human Resource Services, Employee and Labor Relations.
5. On occasion, it may be appropriate to file or to cross-reference a grievance decision in the official personnel file (e.g. to justify a mandated change in salary).
6. 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.
7. Copies of the document reflecting the final administrative action to be taken as a result of a grievance, such as resolution outside of the hearing process (e.g. alternative dispute resolution) or a final decision after formal hearing, will be stored permanently in the provost's office.

F. Prohibited Retaliation:

1. Retaliation against any person who files a formal grievance, whether accepted or not by the FGRB, or against any person involved in the grievance resolution process (e.g. witnesses, administrators) is strictly prohibited.
2. Any claims of retaliation must be reported immediately to the Assistant Vice President of Human Resource Services.
3. Allegations of retaliation for utilizing this rule or for cooperating with the administration of this rule will be taken seriously, investigated independently from the grievance; and if substantiated, will be grounds for employee discipline up to and including involuntary termination.

- G. **Requests to Stay Grievance Proceedings:** With the concurrence of the Assistant Vice President for Human Resource Services and University General Counsel, a grievance may be stayed by the appropriate FGRB Co-Chair 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 rule. The matter may be later reopened or dismissed as appropriate for the circumstances. Any person affiliated with the university may submit a written request to a FGRB Co-Chair that a particular grievance be stayed.

PART 10: PRE-HEARING PROTOCOLS

The Co-Chairs, as determined between the Co-Chairs, will be responsible to coordinate the following pre-hearing tasks in coordination with the designated Hearing Panel Chair:

- A. **Designation of Hearing Panel and Chair:** The Hearing Panel will be appointed within ten (10) Days from the FGRB's decision to accept the grievance. The Co-Chairs will designate the Hearing Panel Chair at the time the Hearing Panel is appointed.
- B. **Identification and Resolution of Potential COI's:** The Co-Chair(s) will inform the Parties in writing of the identity of the members of the Hearing Panel, with instructions to respond in writing whether or not there is any issue involved a perceived or actual conflict of interest, so it may be addressed in the pre-hearing stage.
- C. **Coordinate a Date/Time/Location for the Hearing and Send Notice of Hearing:** In coordination with the Hearing Panel members, with HRS-ELR (provides technical and administrative support such as administering the oath to the witnesses, recording the hearing and organizing the hearing documents for the Grievance Record etc) and with the Parties, the Co-Chair(s) will set a date, time and location for the grievance hearing. *See Part 9 A. 2. above* in the event of scheduling conflicts. The Co-Chair(s) will send Notice of Hearing to the Parties, to the director of HRS-ELR, and to each Hearing Panel member of the date, time and location for the hearing. The notice may also enclose instructions and guidance for the Parties, describing how the hearing will be conducted. *See Section D. below.*
- D. **Submission of Documentation and Witness Lists:** The Co-Chair(s) will direct the Parties to submit via email, on the same date, the documentation they wish the Hearing Panel to consider, including a list of witnesses they intend to call, if any. The documentation must be sent to the appropriate Co-Chair and to each Party. Documents attached to a Party's position paper should be labelled and numbered as that Party's Exhibits (e.g. Grievant's Exhibit 1; Respondent's Exhibit A) Each Party should also be directed to bring a minimum of three copies of the documentation to the hearing (one for the Grievance Record, one for each named Respondent, and one for them self).
- E. **Facilitation of Witness Testimony:** If a Party indicates that one of their witnesses will not cooperate or is otherwise unavailable for the hearing, and the witness is an NMSU employee or retiree, the Co-Chair(s) on behalf of the Hearing Panel will coordinate with HRS or executive administration to facilitate their participation. Witnesses may be permitted to participate via telephone or other electronic means, as long as the Hearing Panel and all Parties are able to hear the witness and the witness is able to hear them. Additionally, a hearing may be continued and re-convened as necessary to facilitate accepting the testimony of a witness who is not available at the designated hearing date and time, provided all Parties are in attendance to hear the testimony and to ask questions of the witness.

PART 11: HEARING PROCEDURES

- A. **Participation:** Each Hearing Panel member appointed must attend and participate. Also present at the hearing will be all Parties, witnesses, and Faculty Consultants. A representative designated by HRS-ELR will serve as notary to swear in witnesses and to record the hearing. Upon request from the Hearing Panel or Co-Chair(s), representatives from HRS and University General Counsel office will be made available for telephonic or in person consultation.
- B. **Hearing Record:** An audio recording of the hearing, excluding the Hearing Panel's deliberations, must be made and preserved for the Grievance Record, in accordance with the university's records retention schedule,

and any litigation preservation notice. The Parties are entitled to a copy of the recording upon written request, after the final written decision has been rendered.

- C. **Disclosure Statement:** The Hearing Panel Chair will 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.
- D. **Role of Legal Counsel:** No person attending the hearing may be represented by legal counsel at the hearing.
- E. **Closed Hearing:** The hearing will be closed to the public.
- F. **Time Allocated for Hearing:**
 - 1. The time scheduled for attendance by the Hearing Panel members will exceed the time scheduled for the hearing, to allow time following the conclusion of the hearing for the Hearing Panel members to deliberate. (*See Section K. below*)
 - 2. The time allotted for the hearing must be sufficient for the Parties to fully present the grievance and position in response to the grievance.
 - 3. The Hearing Panel Chair may impose reasonable time limits relating to witness testimony, in an effort to keep to the hearing timeframe decided upon following the pre-hearing process, for equity and to keep the hearing moving. If something unexpected happens and it becomes clear the time allotted is insufficient, the matter may be continued to a date and time agreed to by the Parties before adjourning.
- G. **Conduct of Hearing:** The Hearing Panel Chair will conduct the hearing fairly and impartially, consistent with this rule. The Hearing Panel Chair communicates for the panel, which may necessitate discussion outside the presence of the Parties and a vote of the panel members, if matters are in debate. The Hearing Panel Chair must maintain control of the proceeding, including evidentiary and procedural issues. For procedural issues raised by the Parties, the Hearing Panel Chair may ask the Parties to step out while the panel deliberates and decides; when the Parties return, the Hearing Panel Chair will announce the panel's decision on the record.
- H. **Witnesses:** Each Party may call witnesses. Witnesses may only be in the hearing while giving testimony. This does not apply to the Parties who must remain present, but also provide testimony.
- I. **Testimony:** Testimony of any Party or witness will be taken under oath. The Hearing Panel Chair may request that all oaths be taken at one time and then the witnesses asked to leave until such time as they are called to testify, or they may be taken individually immediately prior to giving testimony.
- J. **Oath Administration:** A representative from Human Resource Services, Employee and Labor Relations must administer the oath to the Parties participating in a hearing regarding their testimonies.
- K. **Deliberations:** At the close of the hearing, after the Parties have been dismissed, the Hearing Panel will deliberate in closed session. The evidence submitted will be reviewed and discussed; the panel members will collectively decide the facts supported by a preponderance of the evidence. The panel may elect to consult with a representative from the Office of University General Counsel or the Office of Human Resource Services relating to its legal obligations or to procedure; these representatives will not provide advice on the merits of the claim. The members of the Hearing Panel may also meet after the hearing date to continue deliberations, or to confer about and finalize the findings and separate administrative recommendations, if any.

PART 12: FINDINGS OF FACT SUPPORTED BY EVIDENCE & RECOMMENDATIONS

- A. **Timing:** Absent notification to the Parties and the appropriate FGRB Co- Chair justifying a time extension, the Hearing Panel Chair will submit a report of the findings of fact, supported by a preponderance of the evidence, to the final decision maker (typically the provost) within fifteen (15) Days from the closure of the hearing or date of deliberations by the Hearing Panel, whichever is later.

- B. **Preponderance of Evidence and Majority Opinion:** Each finding of fact must be supported by a preponderance of the evidence and constitute the view of a majority of the Hearing Panel. A Hearing Panel member who does not agree with the majority may issue a memo explaining their viewpoint, and must include reference to the evidence they believe supports a different finding or recommended conclusion.
- C. **Administrative Recommendations Optional:** Separate from the factual findings, the Hearing Panel may, but is not required to, issue recommended conclusions or other administrative recommendations relating to or arising from the grievance.
- D. **Delivery of Grievance Record:** The Hearing Panel's findings of fact, administrative recommendations and dissent, if any, will be delivered to the final decision maker via the FGRB Co- Chair(s), who must also deliver the entire Grievance Record.

PART 13: FINAL DECISION

- A. **Decision Maker:** Generally, the provost will issue the written final decision. If for any reason the provost is excused from making a decision due to conflict or unavailability, the Assistant Vice President of the Office of Human Resource Services will designate an alternate academic administrator or the chancellor to serve in this capacity in lieu of the provost, with notice to the Hearing Panel Chair and FGRB Co-Chairs.
- B. **Timing for Final Decision:** Absent notification to the Parties and the FGRB Hearing Panel Chair that additional time is required due to scheduling demands or other lack of availability, the final decision will be issued within fifteen (15) Days from receipt of the FGRB Hearing Panel's findings of fact and the complete Grievance Record.
- C. **Issuance of Decision:** The final decision will explain the evidence which supports the decision, if at variance from the FGRB's findings of fact and conclusions, if any. A copy of the Hearing Panel's findings of fact and conclusions if any, will be enclosed with the final decision. The final decision must be addressed to the Parties, with copy to the Assistant Vice President of Human Resource Services for inclusion in the Grievance Record. Notification that a final decision has been issued will be sent to the FGRB Hearing Panel Chair and FGRB Co-Chairs.

COMPARES UAC 1st Read to UAC 2nd Read**10.60 – Resolution Review of Faculty Grievances** v021219-2 [includes FS Faculty Affairs Committee amendments, approved by the Faculty Senate on March 7, 2019]**PART 1: PURPOSE AND OVERVIEW**

- A. **Redress of Grievances:** This rule is adopted pursuant to the authority granted in [RPM 6.00](#) to provide Faculty with an objective and expeditious process to seek [resolution review](#) of their grievances relating to [work place workplace](#) issues. The rule (*at Part 9. F.*) also prohibits retaliation against those who utilize this rule to file a grievance or who are required to participate in proceedings authorized by this rule.
- B. **Informal Pre-Grievance Dispute Resolution ~~Encouraged~~:** Faculty and academic administrators alike are [encouraged strongly recommended](#) to pursue [pre-grievance informal](#) discussions, mediation or [other alternative](#) forms of [informal dispute resolution services available on campus](#) to resolve contested matters at the lowest administrative level possible, and avoid escalation of a dispute and polarization of the Parties' positions. Failing informal resolution, this rule provides the rules and procedures by which a formal fact finding hearing is conducted by a Hearing Panel comprised of faculty peers, followed by a final decision by the provost.
- C. **Establishment of Faculty Grievance Review Board:** The Faculty Grievance Review Board (FGRB) is established to process the requests for formal grievance hearings. This rule describes the composition and election of members of the FGRB, the FGRB's functions and authority; the requirements to initiate a grievance, and if not dismissed by the FGRB after preliminary review, the rules and procedures relating to the formal hearing process, which culminates with the FGRB issuing findings of fact supported by a preponderance of the evidence, and a final decision by the provost.
- D. **Overview of Rule:** This rule is divided into the following Parts:

PART 1: PURPOSE AND OVERVIEW

PART 2: DEFINITIONS

PART 3: FGRB COMPOSITION; ELECTION OF MEMBERS; TERMS OF SERVICE

PART 4: FGRB FUNCTIONS

PART 5: ADMINISTRATIVE SUPPORT FOR THE FGRB

PART 6: PARTIES' RIGHT TO FACULTY CONSULTANT

PART 7: PROCEDURES TO INITIATE GRIEVANCE

PART 8: PRELIMINARY REVIEW BY THE FGRB

PART 9: RULES PERTAINING TO GRIEVANCES (Time Deadlines; Communications; Confidentiality; Elimination of Potential Bias; Preservation of Grievance Record; Prohibited Retaliation; Requests to Stay Grievance Proceedings)

PART 10: PRE-HEARING PROTOCOLS ([Designation of Hearing Panel and Chair; COI Avoidance; Setting the Hearing Date/Time/Location; Submissions by Parties; Facilitation of Witness Testimony](#))

PART 11: HEARING PROCEDURES

PART 12: FINDINGS OF FACT SUPPORTED BY EVIDENCE AND RECOMMENDATIONS

PART 13: FINAL DECISION

PART 2: DEFINITIONS

Terms defined for purposes of this rule are listed below, and will be capitalized throughout, to indicate it is a defined term.

- A. **Day:** Means Monday through Friday, excluding official university holidays and closures.
- B. **Faculty:** Any full- or part-time tenured, tenure track, or regular non-tenure track faculty member who alleges specific facts indicating that they have been personally and adversely affected by a decision, action, or inaction.

Faculty employment status will be determined by Human Resource Services when requested by the FGRB Co-Chair(s).

- C. **Faculty Consultant:** A faculty member who provides consultation support in the pre-grievance, pre-hearing and formal hearing steps to the faculty grievance process.
- D. **FGRB Co-Chairs:** Two members of the FGRB selected by the membership to lead the FGRB in administering this rule.
- E. **Grievance Record:** The documentation in any format (e.g. e-mail) relating to the grievance, including but not limited to notifications setting the date, time, and location of the formal hearing; written procedural guidance provided by the FGRB Co-Chair(s) or Hearing Panel to the Parties, if any; all evidence submitted by the Parties at the formal hearing, labeled as to which Party submitted it; the recordings of the formal hearing, the findings of fact and recommendations, and the Provost's final decision.
- F. **Grievant:** A Faculty member, or any group of Faculty, alleging a grievable claim.
- G. **Hearing Panel:** Three members of the FGRB (2 faculty and 1 department head), designated by the FGRB Co-Chairs to conduct the formal hearing.
- H. **Hearing Panel Chair:** A member of the three member Hearing Panel designated by the FGRB Co-Chairs to chair the formal hearing.
- I. **Party:** The individual(s) who filed the grievance and any person or unit named or joined as a Respondent.
- J. **Respondent:** Any person or unit whose action or inaction gave rise to the grievance.

PART 3: FGRB COMPOSITION; ELECTION OF MEMBERS; TERMS OF SERVICE

- A. **Membership:** The Faculty Grievance Review Board (FGRB) will consist of a total of 13 ~~Faculty members~~, with ~~69 faculty members elected from the faculty~~ at-large ~~members~~ (6 tenured or tenure-track ~~Faculty~~ ~~faculty~~), 3 college regular non-tenure track ~~Faculty~~ ~~faculty~~), and 4 department heads.
- B. **Elections:** Elections will be held during the fall semester with the term of service to begin the first Day ~~Faculty~~ ~~faculty~~ report the following spring semester. If for some reason service cannot start at that time, regardless of when it does start, the end date of service will not change.
 1. Nominees for the at-large positions will result from a general announcement calling for nominees, including self-nominations. The at-large members will not be a department head, associate dean, or dean on interim or permanent basis. The ~~Faculty~~ ~~faculty~~ will elect the at-large member(s) from the complete list of nominees.
 2. After a general call throughout the NMSU system for nominations for the department head positions, the ~~Provost~~ ~~provost~~ will forward at least two nominations for each vacant position to the Faculty Senate who will elect the member.
 3. Nominations will be made such that no Faculty Senate electing group (See Faculty Senate Constitution) will have more than three members on the FGRB and no department will have more than one.
 4. Elected members will serve a three-year term and will serve no more than two consecutive, 3-year elected terms, with the exception of the provisions in Section C. below.
 5. Elected members will attend orientation training within a month after beginning their FGRB service.
- C. **Continuance of Service:** The members will continue to serve on the FGRB until member's replacement has been elected, notwithstanding the limitation on service to two consecutive three-year terms.

- D. **Service During Summer Months or Other Period of FGRB Member Unavailability:** If there are no FGRB members available to convene a Hearing Panel during the summer months, or any other time, the FGRB Co-Chair(s) and the provost will coordinate to designate similarly representative and neutral members of ~~Faculty~~faculty to serve as alternate hearing officials, in lieu of elected FGRB members for purposes of a specific hearing.
- E. **Vacancies; Interim Appointments:**
1. A FGRB member may resign by providing written notice to the FGRB Co-Chairs, with copy to the Faculty Senate Chair.
 2. Upon a vacancy created by an at-large FGRB member's resignation, the Faculty Senate Chair will announce the vacancy system-wide and ask interested and qualified Faculty to submit their names. The Faculty Senate Chair will select from these names an individual to serve.
 3. Upon a vacancy created by a Department Head FGRB member's resignation, the provost will submit at least two nominees to the Faculty Senate Chair. The Faculty Senate Chair will select from these names an individual to serve.
 4. The replacement member will serve for the remainder of the elected member's term.
 5. Replacement member's service will not be counted as part of the two-term limit.

PART 4: FGRB FUNCTIONS

- A. **General Role and Responsibility:** The FGRB facilitates the hearing of formal grievances filed by Faculty. The FGRB may decline to accept a grievance or may refer the matter for formal hearing by an objective Hearing Panel. (*See Part 8*) Based on issues that have come before it, the FGRB is also authorized to issue recommendations to the provost or to the Faculty Senate for changes in policy, rules or procedures to improve work conditions or to effectuate equity in the Faculty work environment.
- B. **Election of FGRB Co-Chairs:** Each year, the FGRB will elect one FGRB Co-Chair, who may serve more than one term. The goal by electing one per year is that each year, one of the FGRB Co-Chairs will have prior experience, to assist in maintaining the continuity of service provided by the FGRB.
- C. **Authority of Co-Chairs:** Co-chairs vote as any other member of the FGRB. The FGRB Co-Chairs facilitate the processing of formal ~~faeuity~~Faculty grievances in accordance with this rule. They are authorized to communicate on behalf of the full FGRB consistent with the position of the majority, or as the FGRB delegates to them for procedural tasks.
- D. **Meetings:** For all meetings of the FGRB, a minimum of 24 hours e-mail or written notice will be given to all members of the FGRB. For official actions taken by the FGRB (e.g. accepting or declining to accept a grievance), a minimum of a quorum of seven (7) is needed. To facilitate meetings of the FGRB, members may participate telephonically or by other electronic/digital means, provided that all members may be heard on the call and confidentiality is maintained. In addition to the meetings to review new grievances, the FGRB Co-Chairs may convene regular or standing meetings of the full FGRB for the conduct of its business.
- E. **Operational Guidelines; Orientation and Training:** The FGRB may develop guidelines for its operations and the formal hearing not inconsistent with this rule, including new member orientation and refresher training for current members. Any hearing guidelines that will affect the formal hearing process must be provided to the Parties upon the filing of a grievance.
- F. **Attendance at FGRB Orientation and Training Sessions:** Each FGRB member must participate in an orientation session after election to the FGRB and any refresher training recommended by the FGRB Co-Chairs or the provost. If the FGRB Co-Chairs determine that an FGRB member is neglecting their duties (would

include not attending training or not hearing cases), that they may bring this to the attention of the member's supervisor.

- G. **Preliminary Review/Summary Disposition:** After receipt of a formal grievance, the FGRB will meet to determine whether it will accept the grievance for formal hearing. In making its decision, the FGRB will consider the guidance relating to subject matter below in *Part 8. B. below*, the employment status of the Grievant (*See Part 2 B. above*), the timeliness (*See Part 7. A. below*), and if the Grievant has followed the prescribed format (*See Part 7. B.*). If the FGRB determines that the subject matter or relief sought are outside the purview of this rule and the FGRB's authority, it will notify the Grievant that the grievance will not proceed to formal hearing. If the grievance otherwise states a viable grievance but is not in the requisite format, the FGRB may provide the Grievant an additional two weeks to re-submit it before it will be processed for hearing.
- H. **Formal Grievance Hearings:** When the FGRB has accepted a grievance, the FGRB Co-Chairs will designate three FGRB members (2 faculty, 1 department head) to convene as a Hearing Panel to conduct a fact finding hearing. The Hearing Panel members will be selected to provide appropriate peer representation, in terms of faculty status and familiarity with the type of work performed, to the extent possible based on scheduling availability and subject to the constraints of Part 9. D. 3. The Hearing Panel will issue findings of fact supported by a preponderance of evidence. (*See Part 12*)
- I. **Periodic Policy Review:** The FGRB will recommend revisions to this rule as necessary for the efficient processing and consideration of ~~faeuity~~Faculty grievances.
- J. **Attendance at Hearing:** The FGRB is authorized to issue formal notices to named witnesses who are NMSU employees or retirees, requesting their appearance before the Hearing Panel. If such formal request is not honored, the FGRB will seek assistance from executive administration and the AVP Human Resource Services. Additionally, in the event there are insufficient number of FGRB members available to convene a Hearing Panel, academic administration will assist. (*See Part 9. A. below*)

PART 5: ADMINISTRATIVE SUPPORT FOR THE FGRB

The Faculty Senate Chair, or their designee, and the Assistant Vice President of Human Resource Services will coordinate to provide the FGRB with the necessary clerical, administrative, and technical support it requires, which will include guidance relating to applicable time deadlines and other procedural issues that may arise.

PART 6: PARTIES' RIGHT TO FACULTY CONSULTANT

Either Party may enlist the aid of a Faculty Consultant whose role will be to provide guidance directly to the Party. The role of Faculty Consultant does not include actively advocating on behalf of the Party in official communications or at the formal hearing. It is the responsibility of the Party to keep the Faculty Consultant informed. If a Party requests assistance in obtaining a Faculty Consultant, the Faculty Senate Chair or their designee will appoint a senior ~~Faculty~~faculty member to serve in that capacity.

PART 7: PROCEDURES TO INITIATE GRIEVANCE

- A. **Timing:** Failing resolution through alternative dispute resolution, 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 may be waived by the FGRB 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, or other good faith extenuating circumstance.
- B. **Grievance Format:**
1. The grievance will be in memo format, with the subject line indicating that it is a Faculty grievance and the Respondent(s) named therein (e.g. "SUBJECT: Faculty grievance versus Respondents ABC and GHI").

2. The grievance memo, limited to 5 pages excluding attachments, will:
 - a. Identify the Grievant(s) by name, job title, phone number, mailing address, NMSU e-mail address and the method by which they may be readily contacted;
 - b. Identify the Respondent(s) by name, job title, phone number, and e-mail address;
 - c. Identify the issue(s) in dispute, including the specific allegations against each named Respondent;
 - d. Identify any individuals with personal knowledge regarding the issues in dispute, including contact information for the individual;
 - e. Identify efforts made to date to resolve dispute;
 - f. Outline the points in support of the Grievant's position, referencing any supporting documentation;
 - g. State the desired outcome of the grievance;
 - h. 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.";
 - i. Contain the signature of the Grievant with the date signed; and
 - j. Attach or reference any supporting documentation;

C. Notice

: If after preliminary review, the FGRB accepts the grievance for hearing, the Grievant will electronically send a copy of the grievance to:

1. The named Respondent(s);
2. Grievant's and Respondent's supervisors.

PART 8: PRELIMINARY REVIEW BY THE FGRB

- A. **Review by Quorum:** Within ten (10) Days of receipt of the grievance, at least a quorum of the FGRB will convene to review the grievance and determine whether or not the Grievant has standing (*See Part 2. B. above*), has filed timely (*See Part 7 A. above*) regarding an issue that may be grieved under this rule. (*See Section Part 8 B. 2. below*)
- B. **Decision to Accept or Decline Grievance:** The FGRB will vote to either accept the grievance for formal hearing or to decline to hear the matter. Guidance is provided below regarding the types of issues the FGRB will accept and submit to a Hearing Panel.
 1. Subject Matters within FGRB's Purview: The FGRB may hear matters involving alleged violation of university policy, rules or procedures or appeals from administrative decisions and other administrative actions perceived to be unfair or unprofessional, provided university policy, rules or procedures do not otherwise provide or prohibit a dispute resolution process.
 2. Subject Matters Outside of FGRB's Purview: There are several areas outside the scope of authority of the FGRB; when grievances alleging the following types of matters are filed, the FGRB will not accept the grievance and will notify the Parties that the grievance will not be heard.
 - a. Job direction, including coaching, counseling, and documented warnings provided for purpose of improving work performance;
 - b. Non-renewal of annual employment contract during probationary period of a tenure-track Faculty member, unless a violation of policy, rule or procedure, or the letter of hire is alleged;
 - c. The outcome of the promotion and tenure process, unless a policy or procedural violation is alleged to have materially affected the outcome;
 - d. Disputed matters that fall within the jurisdiction of another NMSU unit or hearing body, including but not limited to:
 - i. Involuntary termination for cause ([ARP 10.50 Faculty Alleged Misconduct Investigation, Discipline and Appeals Processes](#))

- ii. Complaints of unlawful discrimination ([ARP 3.25 Discrimination, Harassment and Sexual Misconduct on Campus](#))
 - iii. Intellectual property disputes ([ARP 11.05 Intellectual Property Management](#))
 - iv. Freedom of Expression Conflict ([ARP 3.63 – Freedom of Expression](#)) requires informal resolution prior to filing a grievance;
 - v. Disputes involving animals on campus (ARP 3.45 – Assistive, Service and Companion Animals on University Premises); [ARP 3.45 – Assistive, Service and Companion Animals on University Premises](#);
 - vi. Disputes involving hostile misconduct in the workplace ([ARP3.80-Non-Discriminatory Bullying, Hazing and Hostile Misconduct](#))
- e. Reassignment or transfer, provided no change in tenure home, loss in pay or Faculty rank, or other violation of policy, rule or procedure, or letter of hire is alleged;
 - f. Changes in status of an academic administration position, consistent with policy, rules and procedures (See [RPM 6.00](#), [ARP 7.35 Faculty Compensation – Faculty Retreat Rights](#)) and with letters of hire;
 - g. The substance of a policy, rule or procedure, including established practices, unless it has an alleged unfair impact;
 - h. A resignation that has been sent and received;
 - i. Issues that could have been raised in a previous grievance submitted to the FGRB involving the same Parties and arising from the same or substantially similar facts, unless new evidence is submitted that is found to be substantive. This exclusion is intended to bar duplicative claims or claims that could have been included in the prior grievance; and
 - j. Grievances filed past the time limit, unless authorized by a waiver of the time deadline.

- C. **Notice of Acceptance/Declination to Parties:** If the grievance is declined in accordance with the above, the FGRB Co-Chair(s) will issue official correspondence to the Parties on behalf of the FGRB expressing the basis/es for the decision of the majority of the FGRB. Absent a time extension, a decision that the grievance has been declined should be sent within five (5) Days from the date the FGRB met and made its decision.

PART 9: RULES PERTAINING TO GRIEVANCES

- A. **Time Deadlines:** Faculty grievances should be processed as expeditiously as possible.
- 1. Requests for extensions of time may submitted in writing by any Party or FGRB official involved in the grievance process. Such requests must justify the request, copy the Parties and be addressed to the FGRB. The FGRB will grant reasonable requests for extension and notify the Parties about the new deadline.
 - 2. If the personnel necessary for the hearing are not mutually available on the dates and times proposed for the hearing, the Co-Chair(s) may seek the assistance of the provost or the AVP HRS to resolve scheduling conflicts, or time deadlines may be extended, with notice to the Parties.
- B. **Communications:** Neither party nor their Faculty Consultant may communicate in any form (e.g. verbal, written, email, text, social media) with the FGRB officials about the merits of the grievance. They may seek procedural guidance from the FGRB Co-Chair(s) or Hearing Panel Chair as needed, who will document the communications for the record. Substantive communications which inadvertently happen will be documented via memo for the record and shared with the relevant FGRB officials or Parties as appropriate. Under no circumstances will the involved Parties, witnesses or representatives or Faculty Consultants communicate with the provost or other designated final decision maker about the grievance.
- C. **Confidentiality:** Grievances relate to sensitive personnel issues and all NMSU employees and students who acquire knowledge or information relating to a grievance are asked to maintain confidentiality. The outcome of terms of any negotiated mutual agreement resolving a grievance will be only be divulged to personnel with a “need to know” and whose assistance is required in implementing the terms of the agreement.
- D. **Elimination of Potential Bias:** The FGRB Co-Chair(s) and the Hearing Panel members assigned to the grievance must be able to serve impartially and fairly. The following guidelines are provided to assist the

FGRB and the Parties to work through claims of alleged bias or conflict of interest, ideally in the pre-hearing stage.

1. Any FGRB member selected to serve as a member of the Hearing Panel must disclose actual or potential conflicts of interest immediately, or as soon as it is realized, in order that it may be resolved prior to convening the hearing.
2. A Party, including their representative or Faculty Consultant, must also disclose actual or potential conflicts of interest as soon as it is realized so it may be resolved prior to convening the hearing.
3. Under no circumstances will a FGRB Hearing Panel member participate in a hearing convened to hear a grievance involving a Party with whom the member has a familial, personal, or close professional relationship. A FGRB member will not hear a matter involving Faculty from their own academic department.
4. 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 will not be automatic; either the member will recuse voluntarily or the FGRB Co-Chairs will issue a decision in writing, based upon the specific facts of each case.
5. If the Grievant, Respondent, or a witness has had prior contact with a Hearing Panel member, disqualification from service will not be automatic; either the member will recuse voluntarily or a the FGRB Co-Chair(s) will issue a decision in writing, based upon the specific facts of each case.
6. 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 FGRB member, the resolution will be either voluntary recusal by the individual alleged to have the conflict or by substitution of a different individual by the appropriate FGRB Co-Chair.

E. Preservation of Grievance Record:

1. At the conclusion of the hearing, the FGRB members involved with the grievance will forward official correspondence pertaining to the grievance to the appropriate FGRB Co-Chair.
2. The Hearing Panel Chair, with the assistance from Office of Human Resource Services, Employee and Labor Relations (HRS-ELR) will transmit the formal hearing record to the appropriate FGRB Co-Chair, who will compile the complete Grievance Record and forward to the office of the final decision maker.
3. The final decision maker will ensure that HRS-ELR receives the complete Grievance Record for storage and maintenance in accordance with the university's records retention policies, once the final decision has been issued to the Parties.
4. The Grievance Record will not be filed in the official personnel file. The Grievance Record will be stored in a grievance file with the Office of Human Resource Services, Employee and Labor Relations.
5. On occasion, it may be appropriate to file or to cross-reference a grievance decision in the official personnel file (e.g. to justify a mandated change in salary).
6. 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.
7. Copies of the document reflecting the final administrative action to be taken as a result of a grievance, such as resolution outside of the hearing process (e.g. alternative dispute resolution) or a final decision after formal hearing, will be stored permanently in the provost's office.

F. Prohibited Retaliation:

1. Retaliation against any person who files a formal grievance, whether accepted or not by the FGRB, or against any person involved in the grievance resolution process (e.g. witnesses, administrators) is strictly prohibited.
 2. Any claims of retaliation must be reported immediately to the Assistant Vice President of Human Resource Services.
 3. Allegations of retaliation for utilizing this rule or for cooperating with the administration of this rule will be taken seriously, investigated independently from the grievance; and if substantiated, will be grounds for employee discipline up to and including involuntary termination.
- G. **Requests to Stay Grievance Proceedings:** With the concurrence of the Assistant Vice President for Human Resource Services and University General Counsel, a grievance may be stayed by the appropriate FGRB Co-Chair 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 rule. The matter may be later reopened or dismissed as appropriate for the circumstances. Any person affiliated with the university may submit a written request to a FGRB Co-Chair that a particular grievance be stayed.

PART 10: PRE-HEARING PROTOCOLS

The Co-Chairs, as determined between the Co-Chairs, will be responsible to coordinate the following pre-hearing tasks in coordination with the designated Hearing Panel Chair:

- A. **Designation of Hearing Panel and Chair:** The Hearing Panel will be appointed within ten (10) Days from the FGRB's decision to accept the grievance. The Co-Chairs will designate the Hearing Panel Chair at the time the Hearing Panel is appointed.
- B. **Identification and Resolution of Potential COI's:** The Co-Chair(s) will inform the Parties in writing of the identity of the members of the Hearing Panel, with instructions to respond in writing whether or not there is any issue involved a perceived or actual conflict of interest, so it may be addressed in the pre-hearing stage.
- C. **Coordinate a Date/Time/Location for the Hearing and Send Notice of Hearing:** In coordination with the Hearing Panel members, with HRS-ELR (provides technical and administrative support such as administering the oath to the witnesses, recording the hearing and organizing the hearing documents for the Grievance Record etc) and with the Parties, the Co-Chair(s) will set a date, time and location for the grievance hearing. *See Part 9 A. 2. above* in the event of scheduling conflicts. The Co-Chair(s) will send Notice of Hearing to the Parties, to the director of HRS-ELR, and to each Hearing Panel member of the date, time and location for the hearing. The notice may also enclose instructions and guidance for the Parties, describing how the hearing will be conducted. *See Section D. below.*
- D. **Submission of Documentation and Witness Lists:** The Co-Chair(s) will direct the Parties to submit via email, on the same date, the documentation they wish the Hearing Panel to consider, including a list of witnesses they intend to call, if any. The documentation must be sent to the appropriate Co-Chair and to each Party. Documents attached to a Party's position paper should be labelled and numbered as that Party's Exhibits (e.g. Grievant's Exhibit 1; Respondent's Exhibit A) Each Party should also be directed to bring a minimum of three copies of the documentation to the hearing (one for the Grievance Record, one for each named Respondent, and one for them self).
- E. **Facilitation of Witness Testimony:** If a Party indicates that one of their witnesses will not cooperate or is otherwise unavailable for the hearing, and the witness is an NMSU employee or retiree, the Co-Chair(s) on behalf of the Hearing Panel will coordinate with HRS or executive administration to facilitate their participation. Witnesses may be permitted to participate via telephone or other electronic means, as long as the Hearing Panel and all Parties are able to hear the witness and the witness is able to hear them. Additionally, a hearing may be continued and re-convened as necessary to facilitate accepting the testimony of a witness who is not available at the designated hearing date and time, provided all Parties are in attendance to hear the testimony and to ask questions of the witness.

PART 11: HEARING PROCEDURES

- A. **Participation:** Each Hearing Panel member appointed must attend and participate. Also present at the hearing will be all Parties, witnesses, and Faculty Consultants. A representative designated by HRS-ELR will serve as notary to swear in witnesses and to record the hearing. Upon request from the Hearing Panel or Co-Chair(s), representatives from HRS and University General Counsel office will be made available for telephonic or in person consultation.
- B. **Hearing Record:** An audio recording of the hearing, excluding the Hearing Panel's deliberations, must be made and preserved for the Grievance Record, in accordance with the university's records retention schedule, and any litigation preservation notice. The Parties are entitled to a copy of the recording upon written request, after the final written decision has been rendered.
- C. **Disclosure Statement:** The Hearing Panel Chair will 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.
- D. **Role of Legal Counsel:** No person attending the hearing may be represented by legal counsel at the hearing.
- E. **Closed Hearing:** The hearing will be closed to the public.
- F. **Time Allocated for Hearing:**
1. The time scheduled for attendance by the Hearing Panel members will exceed the time scheduled for the hearing, to allow time following the conclusion of the hearing for the Hearing Panel members to deliberate. (*See Section K. below*)
 2. The time allotted for the hearing must be sufficient for the Parties to fully present the grievance and position in response to the grievance.
 3. The Hearing Panel Chair may impose reasonable time limits relating to witness testimony, in an effort to keep to the hearing timeframe decided upon following the pre-hearing process, for equity and to keep the hearing moving. If something unexpected happens and it becomes clear the time allotted is insufficient, the matter may be continued to a date and time agreed to by the Parties before adjourning.
- G. **Conduct of Hearing:** The Hearing Panel Chair will conduct the hearing fairly and impartially, consistent with this rule. The Hearing Panel Chair communicates for the panel, which may necessitate discussion outside the presence of the Parties and a vote of the panel members, if matters are in debate. The Hearing Panel Chair must maintain control of the proceeding, including evidentiary and procedural issues. For procedural issues raised by the Parties, the Hearing Panel Chair may ask the Parties to step out while the panel deliberates and decides; when the Parties return, the Hearing Panel Chair will announce the panel's decision on the record.
- H. **Witnesses:** Each Party may call witnesses. Witnesses may only be in the hearing while giving testimony. This does not apply to the Parties who must remain present, but also provide testimony.
- I. **Testimony:** Testimony of any Party or witness will be taken under oath. The Hearing Panel Chair may request that all oaths be taken at one time and then the witnesses asked to leave until such time as they are called to testify, or they may be taken individually immediately prior to giving testimony.
- J. **Oath Administration:** A representative from Human Resource Services, Employee and Labor Relations must administer the oath to the Parties participating in a hearing regarding their testimonies.
- K. **Deliberations:** At the close of the hearing, after the Parties have been dismissed, the Hearing Panel will deliberate in closed session. The evidence submitted will be reviewed and discussed; the panel members will collectively decide the facts supported by a preponderance of the evidence. The panel may elect to consult with

a representative from the Office of University General Counsel or the Office of Human Resource Services relating to its legal obligations or to procedure; these representatives will not provide advice on the merits of the claim. The members of the Hearing Panel may also meet after the hearing date to continue deliberations, or to confer about and finalize the findings and separate administrative recommendations, if any.

PART 12: FINDINGS OF FACT SUPPORTED BY EVIDENCE & RECOMMENDATIONS

- A. **Timing:** Absent notification to the Parties and the appropriate FGRB Co- Chair justifying a time extension, the Hearing Panel Chair will submit a report of the findings of fact, supported by a preponderance of the evidence, to the final decision maker (typically the provost) within fifteen (15) Days from the closure of the hearing or date of deliberations by the Hearing Panel, whichever is later.
- B. **Preponderance of Evidence and Majority Opinion:** Each finding of fact must be supported by a preponderance of the evidence and constitute the view of a majority of the Hearing Panel. A Hearing Panel member who does not agree with the majority may issue a memo explaining their viewpoint, and must include reference to the evidence they believe supports a different finding or recommended conclusion.
- C. **Administrative Recommendations Optional:** Separate from the factual findings, the Hearing Panel may, but is not required to, issue recommended conclusions or other administrative recommendations relating to or arising from the grievance.
- D. **Delivery of Grievance Record:** The Hearing Panel's findings of fact, administrative recommendations and dissent, if any, will be delivered to the final decision maker via the FGRB Co- Chair(s), who must also deliver the entire Grievance Record.

PART 13: FINAL DECISION

- A. **Decision Maker:** Generally, the provost will issue the written final decision. If for any reason the provost is excused from making a decision due to conflict or unavailability, the Assistant Vice President of the Office of Human Resource Services will designate an alternate academic administrator or the chancellor to serve in this capacity in lieu of the provost, with notice to the Hearing Panel Chair and FGRB Co-Chairs.
- B. **Timing for Final Decision:** Absent notification to the Parties and the FGRB Hearing Panel Chair that additional time is required due to scheduling demands or other lack of availability, the final decision will be issued within fifteen (15) Days from receipt of the FGRB Hearing Panel's findings of fact and the complete Grievance Record.
- C. **Issuance of Decision:** The final decision will explain the evidence which supports the decision, if at variance from the FGRB's findings of fact and conclusions, if any. A copy of the Hearing Panel's findings of fact and conclusions if any, will be enclosed with the final decision. The final decision must be addressed to the Parties, with copy to the Assistant Vice President of Human Resource Services for inclusion in the Grievance Record. Notification that a final decision has been issued will be sent to the FGRB Hearing Panel Chair and FGRB Co-Chairs.