

## **Interim Disciplinary Policy and Procedure for Complaints Directed at Instructional Staff (Faculty, which Includes Instructors)**

**Approved by President Stephen Wells January 26, 2019**

### A. General Purpose of Disciplinary Action

The purpose of disciplinary action is to address and take corrective action regarding improper conduct of instructional staff that violate federal, state or New Mexico Tech laws, regulations, rules or policies, such as:

- a. Unacceptable workplace behavior/conduct or unsatisfactory performance.
- b. Violation of Equal Opportunity policies.
- c. Violation of New Mexico Tech rules, policies, and procedures.
- d. Immoral, indecent, or outrageous behavior, including conduct at off-premises events sponsored by New Mexico Tech.
- e. Falsification of New Mexico Tech records.
- f. Deliberate damage to or theft of New Mexico Tech property, or property of New Mexico Tech employees, or property of students or others on campus.
- g. Willful disobedience, insubordination or failure to carry out reasonable orders or directives from appropriate management personnel.
- h. Dishonesty, deception or fraud.
- 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 New Mexico Tech-authorized notices.
- l. Gambling on New Mexico Tech premises.
- m. Willfully endangering the health, welfare and safety of themselves or other persons. Carrying firearms, explosives or other weapons on New Mexico Tech property without NMT authorization is prohibited, with the express exemptions of faculty who are authorized to do so in pursuit of their duties (such as research at EMRTC).
- n. Reporting to work under the influence of alcohol, or unauthorized use or distribution of alcohol, or any unauthorized use of controlled chemical substance on New Mexico Tech property.
- o. Acts of aggression and violence, including fighting, threatening actions, bullying (abusive workplace behavior), use of abusive or profane language. See Appendix B for definition of bullying.
- p. Fraudulent worker's compensation claims.
- q. Five consecutive days of absences while under contract without reasonable explanation or contact to supervisor.
- r. Misappropriation of funds, and/or unauthorized use or removal of New Mexico Tech property.

In addressing these issues, it is essential that every supervisor thoroughly investigate each situation as it occurs so that all the facts are known. The dignity and privacy of the employee is to be respected throughout the investigative process and any resultant disciplinary action, if applicable. Each employee who is scheduled to lose pay, including an involuntary termination, shall be given a memo stating that he/she has the right to appeal and the opportunity to meet with their supervisor or his/her designated representative and to state why the contemplated action should not go forward. All investigations and disciplinary actions should be pursued in a timely fashion.

This procedure does not apply to those situations and circumstances covered by the “Regulations Governing Academic Freedom and Tenure (RGAFT).”

#### B. Disciplinary Action for Unsatisfactory Performance or Unacceptable Workplace Behavior

When an employee’s performance does not meet New Mexico Tech standards, progressive discipline shall be applied in most cases. This shall not prevent imposition of more serious disciplinary action including termination depending on the severity of the action. Note that if the alleged behavior that leads to disciplinary action reasonably falls under academic freedom, the accused faculty member may invoke “Regulations Governing Academic Freedom and Tenure (RGAFT)”, and the appeals processes therein. In the event that the applicability of RGAFT is challenged, the matter shall be referred to the Senate Academic Freedom and Tenure Committee for a recommendation to the VPAA who, in turn will render a decision on RGAFT applicability. If the employee is unsatisfied with the VPAA’s decision, they may appeal to the President.

Verbal Warning/Counseling: The first step in disciplinary action is for the supervisor to verbally warn and counsel the employee about the problem. This discussion should be conducted privately and in a pleasant manner. The supervisor’s first objective is to determine if the employee understands the rules, standards, and acceptable levels of performance to be met. The supervisor must explain fully what is expected of the employee, including citing specific examples of acceptable levels of performance; as well as how the performance will be measured. Dates, times and examples of unacceptable performance must be provided for the employee. This step is designed to give the employee the opportunity to correct the substandard performance, not to threaten or discipline him/her. The supervisor shall document the date and nature of the conversation, which will be transmitted to Academic Affairs for inclusion in the employee’s personnel file. Supervisors should set a schedule for the employee to demonstrate performance corrections, typically 30 days is an upper limit.

Written Reprimand: The supervisor shall contact their supervisor, Vice President, and Human Resources to discuss the personnel issue prior to giving the written reprimand. The reprimand includes a formal meeting with the employee and a witness where the supervisor:

- a. Cites example of unacceptable behavior, including details of incident

- b. Reiterates standards the employee must meet for success on the job, how the employee has not met these standards, and
- c. Sets forth a specified period of time for improving the unsatisfactory performance, as well as identifying specific tasks that need improvement.
- d. The supervisor will indicate that failure to improve the performance to an acceptable level within the time period specified will result in further disciplinary action which may include suspension or discharge. The employee's signature indicates receipt of the plan of action, but does not necessarily indicate agreement with it. A refusal to sign by the employee will be documented, and the written warning process will proceed.
- e. A letter confirming the meeting is mailed to the employee's home within 48 hours of the meeting.
- f. The original letter with the employee's signature is sent to the Human Resources Office. One copy shall be sent to Academic Affairs and the supervisor also retains a copy.
- g. Supervisors should set a schedule for the employee to demonstrate performance corrections, typically 30 days is an upper limit.

Disciplinary Suspension or Reassignment of Duties: If the employee's performance still does not meet requirements within the time specified, the supervisor, with the prior concurrence of the Director of Human Resources, proceeds to the next step – disciplinary suspension. Again, the supervisor meets with the employee to discuss the substandard performance and why he/she is being placed on suspension. Disciplinary suspension is an administrative leave with pay for a duration to be determined by the VPAA. The suspension process outlined in the RGAFT procedure will be followed. The suspension letter will indicate that continued failure to correct the substandard performance within a specified time period after the employee returns from suspension will result in termination. Letter distribution is the same as for the written reprimand.

Termination: If the employee's performance does not meet the prescribed standards within the time specified in the disciplinary suspension, the employee will be notified that he/she will be terminated on a specific date. Prior to termination the employee will be given:

- a. The opportunity to prepare a letter of appeal within 5 working days to respond to the written notice and will be informed that he/she has the opportunity to meet with the employee's division director or another person designated by the division director. After the scheduled meeting, the division director or his/her designated person may terminate the employee if there are grounds to believe that evidence referred to in the written notice is correct, or he/she may refer the employee back to his/her department for alternate action. This exercise of the right of appeal supersedes the grievance procedures within this handbook.
- b. As previously mentioned, an employee may face immediate suspension, pending termination, for certain extreme situations.

- c. In the event an employee is terminated due to actions not covered by RGAFT, the employee will not be entitled to any of the provisions of the RGAFT.