

**Faculty Senate Policy Committee**  
**Meeting Agenda, via Zoom, September 2, 2020, 3:30 to 5:00**

**3:30 Approvals**

- Agenda
- Meeting Notes from Previous Meeting

**3:35 Updates**

- Moving C05 to Resources Section of *Faculty Handbook*; moving [C190](#), [C250](#), and [F90](#) to Section B; Plan for moving [C07](#) (proposed revision), [A53.1](#) (proposed new policy), and [C200](#) to Section B
- Consensual Relationships Policy—Describe consensual relationships policy packet and share history.

**3:50 Action Items**

- Guest Status and Possible Change to Charge to add an ex-officio member
- Ethics Committee Charge, Guest: Steve Bishop, Committee Chair: review A61.8 and Section B, Appendix VIII both carry the title “Faculty Ethics and Advisory Committee”

**4:10 Discussion Items**

- Discuss and address campus comments received on C07 “Faculty Misconduct and Progressive Discipline Policy” and A53.1 “Faculty Misconduct Review Committee.” Comment Period ends 9/14/20—how does Committee want to address comments received between this meeting and 9/14/20? Guest: Steve Bishop, Committee Chair
- New Business
  - Age Discrimination –presented by Lee Brown
  - Other
- Work Status Table

**5:00 Adjourn**

# Faculty Handbook

## **A61.8: Faculty Ethics and Advisory Committee**

### *Policy*

The Faculty Ethics and Advisory Committee shall advise and consult with the President of the University, the Provost/Vice President for Academic Affairs, or the Committee on Academic Freedom and Tenure regarding action to be taken, if any, where a faculty member or a graduate, teaching, research or project assistant in the course of his or her instructional or research-related duties is accused of unethical behavior as defined by the Statement of Professional Ethics (Appendix V). The committee shall also familiarize itself with the Statement on Professional Ethics. (See Appendix V, page 53, Policy on Academic Freedom and Tenure.) The committee may decide that a complaint falls outside its mandate and decline to investigate.

(Seven faculty members appointed by the Faculty Senate and one graduate student appointed by the Graduate and Professional Student Association. Members of the Committee shall serve for overlapping, two-year terms. The chairperson shall be elected each year by the Committee and shall be a tenured faculty member.)

# Faculty Handbook

## Faculty Ethics and Advisory Committee

*The Faculty Ethics and Advisory Committee shall consist of seven faculty members nominated by the Faculty Senate. Members of the committee shall serve for overlapping two-year terms. The chairperson shall be elected each year and shall be a tenured faculty member. In the event that a graduate student is accused of unethical behavior, as defined by the Statement on Professional Ethics, with the concurrence of the accused, a graduate student, appointed by the Graduate Student Association, shall serve on the committee, but only for those meetings or parts of meetings during which a graduate student's behavior is being considered.*

(a) The Faculty Ethics and Advisory Committee's (hereinafter referred to as Committee) function is to informally investigate the facts and make recommendations when a faculty member has been accused of conduct inconsistent with the Statement on Professional Ethics (Appendix IV). When a faculty member has been so accused he or she must first seek resolution of the problem from the chairperson, if any, and if still unresolved the dean, and on up through each authority in turn the same as provided for termination cases by Sec. 9 (a) of the Policy on Academic Freedom and Tenure. When the matter is still unresolved, the Committee may be called into action in either of two ways:

(i) By the President of the University, the Vice President for Academic Affairs of the University, or the Committee on Academic Freedom and Tenure, when the assistance of the Committee's informal investigatory function on issues of professional ethics is desired. When a reference to the Committee has been made under this subsection (i), the Committee shall report its recommendations, and the reasons therefore, to the Administrator or Committee making the reference, and to any other parties deemed appropriate by the Committee.

(ii) By a faculty member, graduate, teaching, research, or project assistant who believes that she or he has been accused of unethical conduct. The Committee may, at its discretion, refuse to respond to requests for investigation made by individuals under this subsection (ii), and this discretion may be exercised by the chairperson when it is not convenient to call a meeting of the Committee. It is intended that the Committee investigate only serious accusations which have or may have done damage to the accused's reputation. It is not intended that the Committee be used as a weapon in personal conflicts. When a reference to the Committee has been made under this subsection (ii), the Committee may confer with and report to the President of the University, the Vice President for Academic Affairs, the applicable dean or chairperson, or department at the discretion of the investigating panel.

(b) Investigations by the Committee shall be conducted by panels of three members. Panels shall be selected by the chairperson.

(c) The Committee may informally investigate a situation even though it is also being heard by the Committee on Academic Freedom and Tenure. In such a case the Committee should normally confer with the Committee on Academic Freedom and Tenure about the matter.

(d) The Committee's recommendations and reports, if any, may be made in any form the panel chooses. The panel should confer with the person or Committee requesting informal investigation about the appropriate form of report.

## C07 Faculty Misconduct and Progressive Discipline Policy

Approved By: Faculty Senate and Academic Freedom and Tenure Committee ~~Board of Regents~~

Effective: Draft 8/10/20

Responsible Faculty Committees: Academic Freedom and Tenure Committee and Policy Committee

Office Responsible for Administration: Office of the Provost and Office of the Executive Vice President for Health Sciences

**Legend:** Proposed changes throughout the policy are highlighted as follows: Underscored text in red = proposed new language; ~~Strike through~~ text = proposed deleted text; and Unmarked text = no change.

Revisions to the Policy Rationale, Policy Statement, and Applicability sections of this document must be approved by the Faculty Senate and the Academic Freedom and Tenure Committee.

### POLICY RATIONALE

The University of New Mexico (UNM) is committed to the principles of academic freedom, which rely on the intellectual and professional integrity of faculty members mindful of their rights and responsibilities. Essential to sustaining an environment that supports academic freedom is the requirement for an impartial investigation of alleged faculty misconduct, due process, and when necessary, disciplinary action. It is the responsibility of decision-makers when reviewing alleged faculty misconduct to ensure that the decision-making process is not influenced by a violation of academic freedom, improper consideration, or procedural violations per Faculty Handbook Policy B6 "Academic Freedom and Tenure Committee."

~~The University encourages a supportive problem-solving approach to workplace problems, but the University recognizes that misconduct may require disciplinary action.~~ When the need for disciplinary action is identified, UNM normally uses progressive discipline to address ~~possible~~ misconduct. Progressive discipline is intended to be corrective, not punitive in nature, and is designed to provide faculty with notice ~~of deficiencies~~ and an opportunity to ~~improve~~ take corrective action. However, some misconduct ~~violations of policies and procedures, or continued negative behavior~~ may be of such a serious nature that suspension without pay or dismissal ~~discharge~~ may be appropriate pursuant to all Faculty Handbook policies, including but not limited to Section B.

### POLICY STATEMENT

Any member of the UNM faculty, including any faculty member serving as an academic administrator, accused of misconduct will be subject to this Policy. If after an inquiry or investigation the faculty member is found to have engaged in misconduct, ~~who violates a published~~

University policy the faculty member may be subject to a warning, censure, disciplinary probation, suspension without pay, or dismissal in accordance with this Policy. Teaching, research, and graduate assistants in their faculty capacity are considered faculty members for purposes of this Policy.

Any individual(s) bringing an allegation of faculty misconduct ~~to the chair's attention~~ is protected by, and subject to, UNM's policy on reporting misconduct. Any member of the UNM community who knowingly gives false or materially inaccurate information; knowingly makes a false report of suspected misconduct or a subsequent false report of retaliation; or who knowingly provides false answers or information in response to an ongoing investigation may be subject to administrative action by UNM including disciplinary action. (UAP **Policy 2200**, "Reporting Suspected Misconduct and Whistleblower Protection from Retaliation").

Care must be exercised at all times to ensure confidentiality to the extent possible and to protect the privacy of persons involved in a misconduct inquiry or investigation. The privacy of those who report misconduct in good faith will also be protected to the extent possible. Files involved in an inquiry or investigation shall be kept secure, and applicable state and federal law shall be followed regarding confidentiality of personnel records. Refer to **Policy C70 "Confidentiality of Faculty Records."** If at any step in this Policy it is determined ~~if the final determination is~~ that no misconduct occurred, efforts shall be undertaken to the extent possible and appropriate to fully protect, restore, or maintain the reputation of the faculty member. It is up to the faculty member if such action is documented in their personnel file. ~~s should document such action.~~

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## APPLICABILITY

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All UNM academic faculty, including administrators who are also faculty, working at all UNM sites. This includes all Health Sciences Center colleges and schools, and Branch Community Colleges.

Revisions to the remaining sections of this document may be amended with the approval of the Faculty Senate Policy and Operations Committees and the Academic Freedom and Tenure Committee.
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## DEFINITIONS

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**Allegation** is any report or evidence of misconduct.

**Bias.** Prejudice in favor of or against one thing, person, or group compared with another, usually in a way considered to be unfair.

**Chair.** References to the Department Chair in this Policy also includes the program director or associate or vice dean in a non-departmentalized school or college. If allegations are made against a department chair or other administrator or a department chair recuses themselves, the next higher academic authority shall perform the functions assigned in this Policy to the chair and the provisions shall be modified as appropriate.

**Faculty member.** For the purposes of the Policy, the term faculty member refers to the faculty member whose conduct or actions are in question. Faculty members include teaching, research, and graduate assistants when acting in their faculty capacity.

**Faculty Misconduct Review Committee (FMRC)** is a standing committee appointed by the Academic Freedom and Tenure Committee charged with conducting faculty peer hearings specifically for proposed disciplinary actions of either: 1) suspension without pay of any faculty member or 2) dismissal of any faculty member without tenure. AF&T retains authority to conduct all other hearings within its jurisdiction to include violations of academic freedom, improper consideration, or procedural violations per Faculty Handbook Policy B6 "Academic Freedom and Tenure Committee."

**Misconduct** means conduct or actions that are a substantive violation of laws, regulations, UNM policies, or ethical or professional standards. Examples of misconduct may include, but are not limited to:

- Act(s) of retaliation
- Bullying or threats of violence
- Creating a hostile education or work environment
- Criminal activity such as assault, battery, fraud, theft, or embezzlement
- Discrimination, including sexual harassment
- Failure to disclose conflicts of interest
- Falsification of information
- Illegal use of drugs or alcohol
- Inappropriate disclosure of confidential information
- Misappropriation of UNM funds, property, or resources
- Possession of/or distribution of obscene or pornographic material unrelated to UNM's academic or research mission
- Research misconduct
- Violation of standards of integrity in the conduct of scholarly and scientific research and communication

**Progressive Discipline** is designed to provide an opportunity for a faculty member to take corrective action by imposing more moderate discipline to the first offense than to subsequent offenses, unless the misconduct is of such a serious nature that a higher level of immediate discipline is required such as suspension without pay or dismissal.

**Warning** means an oral reprimand. ~~or expression of disapproval.~~

**Censure** means a written reprimand, ~~or expression of disapproval~~ which shall ~~should~~ include an explanation of the nature of the misconduct, ~~and the~~ specific action(s) to be taken by the faculty member and/or department chair to correct the problem ~~including mentoring, if appropriate,~~ and a statement that further disciplinary action, up to and including dismissal, could occur should the problem persist.

Disciplinary probation involves specific disciplinary action taken for a designated period of time designed to assist the faculty member in correcting misconduct. Examples of disciplinary actions that may be part of the disciplinary probation include, but are not limited to:

- Class monitoring
- Denial of merit-based salary increase
- Reassignment within UNM
- Fines or restitution
- Mandatory counseling
- Modified teaching assignments<sup>i</sup> or other workload assignments.

**Suspension without pay** means disciplinary suspension without regular salary for a stated period of time.

**Dismissal** means discharge or termination of employment initiated by UNM (see *Faculty Handbook* sections B.5.3, B.6.4.3, and B.5.4).

Working Days refer to UNM traditional work days defined by UNM Human Resources as five (5) work days Monday through Friday ending at 5:00 PM. Working days do not include official UNM holidays listed in UAP Policy 3405 "Holidays."

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## WHO SHOULD READ THIS POLICY

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- Board of Regents
- Administrators
- Faculty
- Academic staff
- Academic deans and other executives, Department Chairs, directors, and managers
- Faculty and staff who supervise students serving in a faculty role.

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## RELATED DOCUMENTS

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*Faculty Handbook:*

Policy A53.1 "Policies Applicable to Faculty"

Section B "Policy on Academic Freedom and Tenure"

Policy A52.3 "Faculty Misconduct Review Committee" PROPOSED POLICY

Policy C09 "Respectful Campus"

Policy C70 "Confidentiality of Faculty Records"

Policy C290 "Ombuds/Dispute Resolution Services for Faculty"

Policy E40 "Research Misconduct"

Policy E110 "Conflicts of Interest in Research"

*University Administrative Policies and Procedures Manual:*

Policy 2200 ""Reporting Suspected Misconduct and Whistleblower Protection from Retaliation"

Policy 2210 "Campus Violence."

**Policy 2220** "Freedom of Expression and Dissent"

**Policy 2240** "Respectful Campus"

**Policy 2720** "Prohibited Discrimination and Equal Opportunity"

**Policy 2740** "Sexual Misconduct"

Pathfinder:

**"Visitor Code of Conduct"**

**"Student Code of Conduct"**

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## CONTACTS

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Direct any questions about this Policy to the Office of the Provost or the Office of the Executive Vice President for Health Sciences.

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## PROCEDURES

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The procedures specified in this Policy provide for the consideration and determination of proposed disciplinary actions against faculty members short of dismissal. Consideration and determination of disciplinary actions that may result in a proposed dismissal of a tenured faculty member, or dismissal of an untenured faculty member prior to expiration of his or her contract term, are governed by sections B.5.3, B.6.4.3, or B.5.4, respectively, of the Faculty Handbook and are not covered by these procedures. However, cases in which faculty dismissal has been considered pursuant to sections B.5.3, B.6.4.3, or B.5.4, and a lesser sanction is ultimately proposed instead by the administration, shall be handled under this policy, without duplicating steps that have already taken place. In particular, if the chair and dean conclude that suspension without pay is appropriate in a case in which dismissal was considered but rejected, the faculty member is entitled to request a peer hearing as provided below in sections 10 and 11.

Any report of alleged misconduct shall be treated in a confidential manner and brought to the attention of the department chair responsible for the faculty member whose actions are in question. The department chair should determine if they can impartially review the allegation; if not, they should recuse themselves. If a department chair decides to recuse, the report should be forwarded to the next higher academic authority who shall perform the functions assigned in this Policy to the chair and the provisions shall be modified as appropriate. The department chair or dean, if chair has recused, should also review the department's processes and procedures for reviewing the specific type of complaint.

### **1. Misconduct Subject to Investigation Procedures in Another Specific UNM Policy**

The department chair will review the alleged misconduct to determine if it falls under the jurisdiction in the case of allegations against a faculty member that appear to be within the scope of another specific UNM Policy with defined investigation procedures. ~~and resolution (including but not limited to allegations of research misconduct, discrimination, or sexual harassment).~~ These policies include, but are not limited to, allegations of research misconduct (**FH E40**), violation of respectful campus (FH C09), unethical behavior (FH A61.8), discrimination (**UAP 2720**), or sexual ~~misconduct~~ harassment (UAP 2740). If the department chair has questions as to whether an allegation is within the scope of another policy, the department chair should consult with the Office of the Provost or Executive Vice President for Health Sciences (EVPHS). If the alleged misconduct is within the scope of another specific UNM policy that has its own procedures for investigation, the department chair ~~or dean~~ shall forward such allegations to the appropriate person or



department for handling pursuant to the applicable policy and provide notice to the faculty member.

If an investigation conducted in accordance with another specific UNM policy finds no misconduct, the department chair will inform the faculty member of the determination and document the determination in the faculty member's personnel file(s) in accordance with Faculty Handbook Policy C70 "Confidentiality of Faculty Records."

If an investigation conducted in accordance with another specific UNM policy results in a determination that misconduct has occurred, the department chair shall meet with the faculty member to provide the written report of the investigation. Within five (5) working days after meeting with the faculty member, the department chair shall make a decision on what level of disciplinary action, if any, will result. If the disciplinary action involves ~~is limited to~~ a warning, censure, or disciplinary probation, the procedures in Section 5 herein shall be followed; or if the disciplinary action involves suspension without pay or dismissal the procedures in Section 6 herein shall be followed. ~~If such a process requires the chair to make a disciplinary determination after an investigation and recommendation from another University body, this policy will be followed in determining the appropriate discipline.~~

## **2. Section B Concerns**

If the department chair determines the allegations might pertain to decision-making processes influenced by 1) violation of academic freedom, 2) improper consideration in which a decision on substantive issues was not based upon impartial professional academic judgment and resulted in prejudice to the faculty member, or 3) procedural violations of Faculty Handbook policies that resulted in prejudice to the faculty member, the department chair should consult with the Chair of the Academic Freedom and Tenure Committee (AF&T).

## **3. Preliminary Assessment**

~~In all cases other than those set forth in paragraphs 3 and 4 above, if a member of the faculty is alleged to have violated a policy of the University,~~

If there are no Section B concerns and the alleged misconduct does not fall within the jurisdiction of another specific UNM Policy, the department chair will complete a preliminary assessment within five (5) working days after the matter is brought to department chair's attention. The purpose of the preliminary assessment is to determine whether the allegation is sufficiently credible and specific. The department chair can consult with the dean for assistance with these determinations.

The preliminary assessment is not intended to be an investigation which is covered under Section 4, so the department chair does not necessarily need to interview individuals or gather data beyond any that may have been submitted with the allegation. After completing the preliminary assessment, the department chair will determine the appropriate action as set forth below. The department chair will meet with the faculty member to explain the nature of the alleged violation.

### **3.1. Allegation(s) Not Sufficiently Credible and Specific**

If the department chair determines the allegations are not sufficiently credible and specific, the department chair will inform the faculty member in writing of the determination and ask the faculty member if they wish the determination be documented in the faculty member's personnel file. The department chair will notify the complainant in writing that the report was not found to be specific and credible therefore no further action will be taken.

### **3.2. Conciliation**

Conciliation is voluntary and may be undertaken if both parties agree. The department chair or the faculty member may initiate conciliation proceedings at any time prior to a disciplinary decision by the department chair. ~~by contacting~~ The Ombuds/Dispute Resolution Services for Faculty Office program can provide assistance (refer to Policy C290 "Ombuds/Dispute Resolution Services for Faculty)." ~~as provided in the Information Section of the Faculty Handbook). Section C345 with notice to the other parties.~~

### **3.3. Allegation(s) Pertain to Performance Issues and Not Misconduct**

If the department chair determines the allegations are credible and specific but pertain to performance issues and not misconduct, the department chair should address the issue promptly and directly with the faculty member.

### **3.4. Alleged Misconduct is NOT within the Scope of Another Specific UNM Policy**

If the department chair determines the allegations are credible and specific and the alleged misconduct does not fall within the scope of another specific UNM policy as discussed in Section 1 herein, the department chair will meet with the faculty member to discuss the alleged misconduct within five (5) working days after completion of the preliminary assessment. At the meeting, the department chair will provide a written report to the faculty member that describes the specific alleged misconduct, including a summary of any documentation.

- If the faculty member acknowledges the misconduct, the department chair and the faculty member will discuss possible disciplinary action. If the disciplinary action involves a warning, censure, or disciplinary probation, the procedures in Section 5 herein shall be followed; or if the discipline involves suspension without pay or dismissal the procedures in Section 6 herein shall be followed.
- If the faculty member does not agree that misconduct occurred, the department chair shall initiate an investigation in accordance with Section 4 herein to determine if the allegations meet the definition of misconduct and are credible. The department chair will begin the investigation within five (5) working days after meeting with the faculty member.

#### **4. Investigation of Misconduct NOT Subject to Investigation Procedures in Another Specific UNM Policy**

The purpose of the investigation is to explore the allegations in detail, examine the evidence in depth, and determine specifically whether the faculty member engaged in misconduct. The investigation should be conducted in a confidential manner, to the extent possible, and be completed within fifteen (15) working days. At a minimum the investigation should include a meeting with the faculty member. The faculty member may be accompanied by one (1) person in meeting with the **department chair**. The faculty member ~~and the chair~~ shall notify the department chair ~~each other~~ at least two (2) working days prior to the scheduled meeting who, if anyone, will be accompanying them at the meeting. Before, during or after the meeting, the **department chair** may ask the faculty member to respond in writing to the **allegations** ~~notice~~ and present any relevant written material within a reasonable time specified by the **department chair**. ~~Likewise~~ The faculty member shall be free to submit any materials the faculty member believes to be relevant ~~reasonably desired on his/her own volition~~ no later than five (5) working days after meeting with the **department chair** unless the **department chair** grants additional time in writing. The department chair should also meet with other individuals who might have information regarding aspects of the allegations.

~~The chair should issue a written report~~ Within five (5) working days after completion of the investigation, the department chair shall meet with the faculty member and provide a written report that will include a summary of the evidence reviewed and discussions with the faculty member and ~~any other~~ **all** individuals interviewed. ~~after the meeting summarizing the discussion with the faculty member~~ A signed copy of the report shall be placed in the faculty member's **personnel** file. ~~and sent to the faculty member. The matter may be concluded at this point by the mutual consent of all parties.~~

##### **4.1. Determination of Disciplinary Action**

Within five (5) working days after meeting with the faculty member, the department chair shall make a decision on what level of disciplinary action, if any, will result. If the disciplinary action involves a warning, censure, or disciplinary probation, the procedures in Section 5 herein shall be followed; or if the disciplinary action involves suspension without pay or dismissal the procedures in Section 6 herein shall be followed.

~~In all cases other than those set forth in above, if a member of the faculty is alleged to have violated a UNM policy, the department chair shall provide the faculty member a written notice explaining the nature and specific content of the alleged violation, together with a copy of this Policy, and shall discuss the alleged violation with the faculty member. The written notice shall be given to the faculty member within ninety (90) days of the chair learning of the apparent violation of policy.~~

#### **5. Warning, Censure, Disciplinary Probation Proposed**

~~If a mutually agreeable resolution (with or without conciliation) is not achieved, the department chair shall make a decision in the matter and communicate it to the faculty member in writing within ten (10) working days after meeting with the faculty member or the termination of conciliation efforts if they are unsuccessful, whichever is later.~~ If the **department chair**, after meeting with the faculty member and considering all materials submitted pursuant to **Sections 1 through 4 of this Policy**, proposes a **warning, censure, or disciplinary probation**, the **department chair** shall meet with the dean within five (5) working days of the meeting with the faculty member to review the matter to determine if the

proposed discipline is justified and consistent with discipline within the college. If formal conciliation has not been attempted previously, the dean may suggest such action. ~~refer the matter to Ombuds/Dispute Resolution Services for Faculty.~~ Conciliation is voluntary and may be undertaken if both parties agree. If the proposed discipline is supported by the dean, the department chair may proceed with the discipline by providing the faculty member with a written discipline notice. ~~of the proposed action.~~

## **5.1. Appeals**

If the faculty member does not agree with the results of the investigation and/or the disciplinary action, the faculty member may appeal a warning, censure, or disciplinary probation in accordance with the following sections; however, the disciplinary action will not be delayed pending appeal.

### **5.1.1. Appeal to Provost or Executive Vice President for Health Sciences (EVPHS)**

~~If the faculty member does not agree with the disciplinary action, he/she~~ The faculty member may submit an appeal a written request for review by to the Provost or EVPHS within ten (10) ~~five (5)~~ working days of receipt of the written discipline notice from the department chair ~~dean~~. The Provost/EVPHS will decide the matter ~~on the record~~ based on the investigation written report as discussed in sections 1 and 4 herein, unless the Provost/ EVPHS ~~he/she~~ determines that it would be helpful to meet with the parties, together or separately. Within ten (10) working days after receipt of the request for review from the faculty member, ~~complete record or after meeting with the parties, whichever is later,~~ the Provost/ EVPHS shall uphold, modify, or reverse the disciplinary decision by written notice to the parties; or if the Provost/ EVPHS determines the investigation was not complete, the Provost/EVPHS may remand the matter back to the department chair for further action. ~~The Provost/Chancellor may seek an advisory investigation and opinion from the Faculty Ethics Committee.~~

#### **5.1.1.1 Academic Freedom and Tenure Committee**

The Academic Freedom and Tenure Committee (AF&T) has the authority to review an appeal request brought by a faculty member who ~~may bring a complaint before the UNM Academic Freedom and Tenure Committee (AF&T) if he/she~~ believes the matter ~~or its handling~~ is within the jurisdiction of AF&T per Policy B6. AF&T will determine whether the matter is within its jurisdiction and, if so, shall handle the matter under the Policy on Academic Freedom and Tenure. Normally, ~~review by~~ the AF&T Committee will not review an appeal request ~~the complaint~~ until after a written decision is issued ~~should be sought after the determination by the Provost/EVPHS.~~ ~~If the faculty member pursues the matter before the AF&T Committee, AF&T shall accept the facts as determined by the Faculty Peer Hearing Panel, if a hearing one was held.~~

#### **5.1.2. Appeal to the President**

If the faculty member does not agree with the decision of the Provost/EVPHS, the faculty member may request a review by the President. The President has discretion to determine whether the appeal will be considered. The request shall be made in writing, and must include the alleged facts, what happened in the proceedings to date, and the reasons justifying extraordinary review. Such requests must be filed in the President's Office within ten (10) working days of the date of the written decision from the Provost/EVPHS.

### **5.1.3. Appeal to the Board of Regents**

In accordance with Regent Policy 1.5 "Appeals to the Board of Regents," a faculty member affected by a decision of the administration may appeal the decision to the Board of Regents after all other avenues of appeal has been exhausted. The Board has discretion to determine whether the appeal will be considered. A request from the faculty member for a review by the Board of Regents shall be made in writing, and must include the alleged facts, what happened in the proceedings to date, and the reasons justifying extraordinary review. Such requests must be filed in the President's Office within ten (10) working days of the date of the written decision from the President.

### **6. Suspension Without Pay or Dismissal Proposed**

If the department chair, after meeting with the faculty member and considering all materials submitted pursuant to Sections 1 and 4 of this Policy, proposes to suspend the faculty member without pay or dismiss the faculty member, the department chair shall meet with the dean to review the matter to determine if the suspension without pay or dismissal is justified and consistent with discipline within the college. The dean shall meet with the faculty member to discuss the matter and the proposed discipline within five (5) working days after meeting with the department chair. If the proposal to suspend the faculty member without pay or dismiss the faculty member is supported by the dean after meeting with the department chair and the faculty member, the dean shall consult with the Provost or EVPHS within five (5) working days after meeting with the faculty member. The Provost or EVPHS will review the case on the record and issue a decision within five (5) working days after consulting with the dean. If the Provost or EVPHS supports the suspension without pay or dismissal of the faculty member, the faculty member is entitled to a faculty peer hearing. The Chair must provide the faculty member with a written notification of their right to a peer hearing and the process involved.

If a lesser disciplinary action is imposed in place of the proposed suspension without pay or dismissal, the faculty member may request a discretionary review by the President or the Board of Regents in accordance with sections 5.1.2 and 5.1.3 herein.

The faculty member shall have ten (10) working days from receipt of the written decision to submit a written request for review by the appropriate dean, who will issue a written decision concerning whether the chair's decision is upheld, modified or reversed. Prior to making a decision, the dean shall meet with the department chair and the faculty member, and their representatives if desired, together or separately, and shall receive and consider any documents the parties wish to submit. Documents shall be submitted within five (5) working days of the faculty member's request for review. The dean will communicate his/her decision to the parties in writing within ten (10) working days after meeting with the faculty member or the termination of conciliation efforts if they are unsuccessful, whichever is later.

### **6.1. Academic Freedom and Tenure Committee**

The Academic Freedom and Tenure Committee (AF&T) has the authority to review an appeal request brought by a faculty member who ~~may bring a complaint before the UNM Academic Freedom and Tenure Committee (AF&T) if he/she believes the matter or its handling is within the jurisdiction of~~ AF&T per Policy B6, AF&T will determine whether the matter is within its jurisdiction and, if so, shall handle the matter under the Policy on Academic Freedom and Tenure. Normally, the AF&T Committee will not review an appeal request ~~the complaint~~ until after a written decision is issued

should be sought after the determination by the Provost/EVPHS. If the faculty member pursues the matter before the AF&T Committee, AF&T shall accept the facts as determined by the Faculty Peer Hearing Panel, if a hearing one was held.

## **6.2. Suspension Without Pay for any Faculty Member and Dismissal of Faculty Member Without Tenure**

### **6.2.1. Peer Hearing**

If the proposed discipline is suspension without pay of any faculty member or dismissal of a faculty member without tenure, the faculty member shall may send such a request for a peer hearing to the Chair of AF&T. If the alleged faculty misconduct is influenced by a violation of academic freedom, improper consideration, or procedural violations per Faculty Handbook Section B6 the Chair of AF&T will refer the request to AF&T for action in accordance with Policy B6 "Academic Freedom and Tenure Committee." If the alleged faculty misconduct is NOT influenced by a violation of academic freedom, improper consideration, or procedural violations per Faculty Handbook Section B6 the AF&T Chair will refer the request for a hearing to the Chair of the UNM Faculty Ethics Misconduct Review Committee (FMRC) within ten (10) working days of receipt of the Provost's or EVPHS's decision for suspension without pay or dismissal.

The Chair of the FMRC Ethics Committee will arrange for a peer hearing and appoint a hearing panel composed of five (5) members of the FMRC. ~~before two members of that Committee from outside the faculty member's department, chosen by the Ethics Committee, and one (1) uninvolved department chair from a different school or college chosen by the Provost/Chancellor.~~ The hearing will be held as soon as reasonably possible and shall be conducted according to the Model Hearing Procedures. ~~University's Dispute Resolution Hearing Procedures.~~ The Office of University Secretary shall make arrangements for the hearing and shall provide support for the hearing panel. The hearing shall be recorded and shall be private unless both parties agree that the hearing be open. The hearing panel shall be chaired by one of the faculty members assigned to the hearing panel. The proceedings and the preparation of the decision shall be controlled by the peer hearing panel members.

If the ~~other~~ investigative procedure involved a hearing before a faculty committee, any factual determination will not be subject to reconsideration by faculty peer review under this Policy. The hearing panel may uphold or reverse the proposed disciplinary action and submit their recommendation to the FMRC for a final decision. ~~al to suspend the faculty member without pay or dismissal.~~ Decisions from the FMRC will be submitted to AF&T for confirmation. If the ~~Panel's~~ FMRC's decision is to reverse the proposal, the ~~Panel~~ FMRC may direct the department chair and dean to impose a lesser disciplinary measure or may find that no misconduct has occurred and determine that no discipline should be imposed. The ~~Panel's~~ FMRC's decision may be reviewed on the record by the Provost/EVPHS, but the ~~Panel's~~ FMRC's decision shall not be reversed or modified except in the case of clear error. If the Provost/EVPHS reverses or modifies the FMRC decision, the justification shall be detailed in writing by the Provost/EVPHS. The decision of the ~~Panel~~ FMRC and/or Provost/EVPHS is subject to discretionary review by the President or Board of Regents if requested by the faculty member.

### **6.2.2. Appeal to the President**

If the faculty member does not agree with the decision of the ~~FMRC Peer Hearing Panel~~, the faculty member may request a review by the President. The President has discretion to determine whether the appeal will be considered. The request shall be made in writing, and must include the alleged facts, what happened in the proceedings to date, and the reasons justifying extraordinary review. Such requests must be filed in the President's Office within ten (10) working days of the date of the written decision from the Provost/EVPHS.

### **6.2.3. Appeal to the Board of Regents**

In accordance with Regent Policy 1.5 "Appeals to the Board of Regents," a faculty member affected by a decision of the administration may appeal the decision to the Board of Regents after all other avenues of appeal has been exhausted. The Board has discretion to determine whether the appeal will be considered. A request from the faculty member for a review by the Board of Regents shall be made in writing, and must include the alleged facts, what happened in the proceedings to date, and the reasons justifying extraordinary review. Such requests must be filed in the President's Office within ten (10) working days of the date of the written decision from the President.

### **6.3. Dismissal of Tenured Faculty Member Proposed**

If the proposed discipline is dismissal of a tenured faculty member, refer to *Faculty Handbook Policy B6* for applicable policies and procedures.

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## DRAFT HISTORY

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June 3, 2020 –revise for Policy Committee decisions  
May 21, 2020 – revise for changes Sec B taskforce recommendations.  
April 20, 2020 –revised to move preliminary assessment section after other jurisdictions and include protection to respondent.  
February 13, 2020–Draft revised for possible move to Section B  
March 8, 2018—Draft revised to incorporate FSPC changes and endorsed by AF&T  
February 12, 2018—Draft revised to incorporate AF&T 2/9/18 recommendations.  
February 1, 2018 -- Draft revised to incorporate AF&T 1/26/18 recommendations.  
January 2, 2018 – Draft revised to incorporate AF&T 12/15/17 recommendations.  
November 19, 2017 -- Draft revised to incorporate AF&T 11/16/17 recommendations.  
November 14, 2017 -- Draft revised to incorporate AF&T 11/3/17 recommendations.  
November 1, 2017 – Draft revised to incorporate AF&T 10/20/17 recommendations.  
October 18, 2017 – Draft revised to incorporate V. Valencia feedback.  
October 14, 2017 – Draft revised to include pre assessment procedures.  
October 7, 2017 – Draft revised per AF&T Oct 6, 2017 meeting.  
September 10, 2017 –draft with AF&T Committee’s changes from last year.

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## HISTORY

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December 13, 2011 – Approved by Board of Regents  
March 22, 2011 – Approved by Faculty Senate

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## **A53.1 Faculty Misconduct Review Committee**

Approved By: Faculty Senate and Academic Freedom and Tenure Committee

Effective: **Draft 8/20/20 NEW Policy**

Responsible Faculty Committees: Academic Freedom and Tenure Committee

Office Responsible for Administration: Office of the Provost and Office of the Executive Vice President for Health Sciences

Revisions to the Policy Rationale, Policy Statement, and Applicability sections of this document must be approved by the Academic Freedom and Tenure Committee

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### **POLICY RATIONALE**

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Because the Academic Freedom and Tenure Committee (AF&T) is responsible for reviewing significant decisions affecting faculty tenure, promotion, sabbatical leave and employment, the Faculty Misconduct Review Committee (FMRC) is a standing committee of AF&T and appointed by AF&T to conduct a peer hearing requested by a faculty member who has been accused of misconduct and has received notice from the chair that proposed disciplinary action includes suspension without pay for any faculty member or dismissal of faculty member without tenure.

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### **POLICY STATEMENT**

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Faculty may volunteer or be recommended to serve on the FMRC. AF&T will appoint at least nine (9) FMRC members and provide training. The FMRC will normally confer within thirty (30) days after being appointed and elect a chair.

Membership: The FMRC consists of nine (9) faculty members. Normally, at least two (2) members will be former AF&T members. They will serve two-year staggered terms. Terms may be renewed, but members may not serve more than four (4) consecutive years. Pending cases shall continue with original panel members until closed even if a faculty member's term expires during process.

When the Chair of the FMRC receives a request for a peer hearing in accordance with Faculty Handbook Policy **C07**, the Chair will appoint a Hearing Panel composed of five (5) FMRC members. The hearing will be held as soon as reasonably possible and shall be conducted according of the Model Hearing Procedures. The Panel will send a recommendation to the FMRC for a final decision. Decisions from the FMRC will be submitted to AF&T for confirmation.

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### **APPLICABILITY**

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All UNM faculty, including the Health Sciences Center and Branch Community Campuses.

Revisions to the remaining sections of this document may be amended with the approval of the Academic Freedom and Tenure Committee.

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## DEFINITIONS

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There are no specific definitions required by this Policy.

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## WHO SHOULD READ THIS POLICY

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- All UNM faculty.
- Academic administrators and staff.
- Administrative staff responsible for policy development.

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## RELATED DOCUMENTS

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*Faculty Handbook:*

[Policy A51](#) "Faculty Constitution"

[Policy A52.1](#) "Academic Freedom and Tenure Committee"

[Policy C07](#) "Faculty Misconduct and Progressive Discipline Policy"

[Model Hearing Procedures](#)

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## CONTACTS

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Direct any questions about this policy to Office of the University Secretary.

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## PROCEDURES

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The FMRC will meet as required to appoint hearing panels and approve panel decisions. The Committee Chair will report Committee decisions to the AF&T Committee.

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## DRAFT HISTORY

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June 19, 2020 – approved by AF&T

June 3, 2020 – approved by Policy Committee

May 29, 2020 – change for Section B taskforce meeting

April 17, 2020 – change Chancellor to EVPHS

January 27, 2018 – New Policy draft

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## HISTORY

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New Policy in Draft

## Faculty Handbook

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**From:** Stephen Bishop  
**Sent:** Monday, August 17, 2020 11:26 AM  
**To:** Faculty Handbook  
**Subject:** Comments on changes to C07 and A52.3

While FEC endorses the substantive changes to C07 and the creation of A52.3 as improvements to UNM policy concerning the handling of faculty discipline and misconduct, we have two objections we would like to see rectified:

1) One of the justifications for the C07 changes is "The FRMC would take over the peer hearing role of the Ethics Committee, thereby eliminating any potential conflict that may result from ethics misconduct investigations conducted by the Ethics Committee." This statement implies that the FEC has regular conflict issues when conducting investigations. To even imply, especially without proof, that a committee on ethics may have such problem is insulting to the committee and risks undermining confidence in it. Since we can see no reason why this explanation is necessary to insure passage of the proposed change, we ask that it be removed from future statements.

2) Far more importantly, this change to a fundamental aspect of the FEC's charge was done with no official participation by the FEC. That makes no sense as a matter of good policy or as a simple question of courtesy. Again, the FEC does support the change, but nonetheless protests having no official representation or presence in the form of a memo or testimony at the Policy meeting(s) where the decision was made. We ask that such lack of voice concerning the FEC's own charge be avoided in the future.

Sincerely,

Stephen L. Bishop

Chair, Faculty Ethics Committee

## Faculty Handbook

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**From:** Cameron S Crandall <CCrandall@salud.unm.edu>  
**Sent:** Thursday, August 13, 2020 8:20 AM  
**To:** Faculty Handbook  
**Subject:** Comments on C07

In my review of the proposed changes to C07, I am concerned about that the language below:

“Misconduct means conduct or actions that are a substantive violation of laws, regulations, UNM policies, or ethical or professional standards. Examples of misconduct may include, but are not limited to:

...

- Possession of/or distribution of obscene or pornographic material unrelated to UNM’s academic or research mission”

It is not clear why possession of pornographic material which would otherwise not be considered illegal be grounds for misconduct, particularly when such possession would be at a person’s home or on their personally owned computing devices (which might be with them on campus). Portions of this language should remain. Possession of illegal materials (e.g., child pornography) is clearly grounds for misconduct (as it is criminal) as would be distribution of any pornographic materials on campus or via UNM’s computing services.

This language appears in a few places in existing policy. Notably, Administrative Policies and Procedures Manual - 3215: Performance Improvement (<https://policy.unm.edu/university-policies/3000/3215.html>) and Administrative Policies and Procedures Manual - Policy 2500: Acceptable Computer Use (<https://policy.unm.edu/university-policies/2000/2500.html>).

In 2500, it is clear that use of UNM computing services to possess or distribute pornography is not permitted. In 3215, the existing language appears similar to the proposed language.

I propose that the language be clarified in C07 (and 3215) to eliminate the prohibition of possession at home or on personally owned devices as grounds for misconduct. I would distinguish illegal materials (such as child pornography) and maintain the language regarding prohibition of distribution of all pornographic materials unrelated to UNM’s academic or research mission.

Cameron S Crandall, MD  
Regents’ Professor and Vice Chair for Research  
Department of Emergency Medicine

Associate Vice Chancellor for LGBTQ Diversity, Equity, and Inclusion  
HSC Office for Diversity, Equity and Inclusion



## Candyce Torres

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**From:** Faculty Handbook  
**Sent:** Thursday, August 27, 2020 1:51 PM  
**To:** Candyce Torres  
**Subject:** FW: Comments on changes to C07

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**From:** Bethany Davila <bdavila@unm.edu>  
**Sent:** Thursday, August 27, 2020 1:41 PM  
**To:** Faculty Handbook <handbook@unm.edu>  
**Subject:** Comments on changes to C07

Following are comments to the C.07 policy changes

Small comments:

- Under applicability, add “Teaching, research, and graduate assistants in their faculty capacity are considered faculty for purposes of this policy.”
- Reference 6.2.1 on first mention of peer hearing
- 3.3 – pertaining (not pertain)

Questions:

- Last sentence of policy statement: what is “such action”—the attempt to protect, restore, or maintain the reputation? Or the determination of no misconduct? I believe there should be a record of the complaint and investigation in the faculty member’s file—even if the process determines that no misconduct has occurred—to establish pattern should another situation come up in the future.
- Procedures states the chair or dean “should also review the department’s processes and procedures for reviewing the specific type of complaint.” Why would a department have a separate process? Shouldn’t all departments follow this process?
- Does step 1 under procedure mean that misconduct can’t be considered as violation of multiple policies, laws, standards? It seems like the alleged misconduct should be investigated according to all of the violations.
- Does the written discipline notice for a verbal warning go into the faculty member’s file? Again, written documentation is important in case the behavior continues or worsens.

Thank you,  
Beth

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Bethany Davila, PhD  
Associate Professor, Rhetoric and Writing  
University of New Mexico  
Pronouns: She/her

## Faculty Handbook

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**From:** David Hanson <dthanson@unm.edu>  
**Sent:** Thursday, August 13, 2020 6:20 AM  
**To:** Faculty Handbook  
**Subject:** Fwd: Faculty Policies Available for Review and Comment!

Although the additions to C07 refer to other existing processes, the line between them is confusing and could be a problem, especially with time constraints on actions. For example, E40 states that research misconduct queries can go straight to the VPR for the initial termination of the validity of the charge and then proceed without ever involving the Chair (which I think is good for confidentiality), and E40 doesn't mention C07 anywhere. It is unclear to me what happens if a case is initiated through E40, and then a faculty member goes to the C07 process. Also, E40 should state when C07 or the new A52.3 committee could get involved. It is much clearer about how to handle cases that start in C07 and determining if they move to E40, but not the other way around. I am also concerned that there could be fundamentally different processes between the various misconduct investigations that might need to be reconciled.

----- Forwarded message -----

From: **UNM Faculty** <[allfac@unm.edu](mailto:allfac@unm.edu)>  
Date: Wed, Aug 12, 2020 at 5:04 PM  
Subject: Faculty Policies Available for Review and Comment!  
To: <[ALLFAC-L@list.unm.edu](mailto:ALLFAC-L@list.unm.edu)>

Dear Faculty:

In accordance with Faculty Policy A53 “Development and Approval of Faculty Policies,” the following proposed amended policy and new policy are available for a faculty review and comment period which ends September 14, 2020. Please email your comments to [handbook@unm.edu](mailto:handbook@unm.edu).

Click on the Policy # below to view the proposed policy or visit <https://handbook.unm.edu/under-review/>.

#	Policy	Proposed Action
<a href="#">C07</a>	<b>Faculty Discipline</b>	<ul style="list-style-type: none"><li>• Highlights the need to consider the principles of academic freedom and tenure when reviewing allegations of faculty misconduct.</li><li>• Requires an investigation of alleged misconduct before a disciplinary decision is made.</li><li>• Stresses the need for confidentiality to protect the privacy of individuals involved.</li><li>• Defines misconduct.</li><li>• Adds a level of discipline, “Disciplinary Probation,” as an intermediary step between censure and suspension without pay, based on an AAUP faculty discipline document.</li><li>• Differentiates between processes for less serious sanctions (warning, censure, and disciplinary probation) which will not be delayed pending appeal; from more serious sanctions (suspension without pay and dismissal), which allows for a peer hearing and appeals to take place prior to proceeding with the sanction.</li></ul>

		<ul style="list-style-type: none"> <li>• Creates the Faculty Misconduct Review Committee (FMRC) to conduct peer hearings for discipline actions not requiring AF&amp;T peer hearings. The FRMC would take over the peer hearing role of the Ethics Committee, thereby eliminating any potential conflict that may result from ethics misconduct investigations conducted by the Ethics Committee.</li> <li>• Clarifies faculty appeal rights.</li> </ul>
<a href="#">A52.3</a>	<b>Faculty Misconduct Review Committee (New Policy)</b>	<ul style="list-style-type: none"> <li>• Delineates the Committee’s role and responsibilities.</li> <li>• Defines membership eligibility and composition.</li> </ul>

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David T. Hanson  
 Professor  
 UNM Biology, Castetter Hall 1480  
 MSC03-2020, 219 Yale Blvd NE  
 1 University of New Mexico  
 Albuquerque, NM 87131-0001

E-mail: [dthanson@unm.edu](mailto:dthanson@unm.edu)

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## Faculty Handbook

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**From:** Robert L Rubin <RLRubin@salud.unm.edu>  
**Sent:** Thursday, August 13, 2020 1:23 PM  
**To:** Faculty Handbook  
**Subject:** C07 language

Overall, there seems to be substantial power given to the departmental Chair in judging how or whether alleged misconduct should be investigated. This in itself seems arbitrary. But most significantly, this runs the risk of bias for or against individual faculty members by the Chair. And what happens if there is alleged, potential misconduct by the Chair? Overall, the role of the Chair in the investigation of misconduct seems inappropriate.

Robert L. Rubin, Ph.D., Professor  
Department of Molecular Genetics and Microbiology  
University of New Mexico Health Sciences Center  
Albuquerque, New Mexico 87131  
505 272-4640

## Faculty Handbook

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**From:** Angela Wandinger-Ness <AWandinger-Ness@salud.unm.edu>  
**Sent:** Wednesday, August 12, 2020 5:17 PM  
**To:** Faculty Handbook  
**Subject:** I appreciate the expanded clarification regarding faculty misconduct policies

I am happy to see the tiered approach to faculty discipline. Thank you for moving this forward to allow a fairer and graded approach to disciplinary actions.

Angela Wandinger-Ness, Ph.D.

The Victor and Ruby Hansen Surface Endowed Professor in Cancer Cell Biology and Clinical Translation PI and Director ASERT Institutional Research and Career Development Award for Postdoctoral Fellow Training Associate Director Education, Training and Mentoring UNM Comprehensive Cancer Center AAAS 2020 Lifetime Mentor Awardee Presidential Award for Excellence in Science, Mathematics and Engineering Mentoring

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