

**REGENTS PROFESSORS TASK FORCE
FINAL REPORT
JUNE 2008**

Purpose

The Regents Professors Task Force was formed in April, 2008 with the following charge:
[T]o examine and review events that have negatively impacted NMSU within the past three months. The task force is not an investigative task force. They will review and examine information and make recommendations to the President and Provost for future actions. In considering the timeline and areas to which they feel they can most effectively contribute, the task force will be examining faculty policies and communication.

Specifically, the Task Force examined the policy and communication issues that arose from the controversial non-renewal of two tenure track faculty members in the College of Health and Social Services, Dr. Yelena Bird and Dr. John Moraros. It is important to note that while the cases of Dr. Bird and Dr. Moraros informed the Task Force with regard to issues that should be addressed, the Task Force was not charged with investigating the detailed circumstances surrounding the non-renewal of these two faculty members. Hence, the reasons for the non-renewal will not be discussed in this report. However, the report will consider whether university policies were followed with regard to the mechanics of hiring and non-renewal of the two faculty members and whether these policies are clear, defensible, and fully articulated within and outside New Mexico State University.

Composition of Task Force

Chair

Jozi De Leon Associate Provost

Regents Professors

Lowell Catlett	Dean, College of Agriculture and Home Economics
Maria Luisa Gonzalez	Professor, Educational Management and Development
Daniel Howard	Interim Associate Dean for Research, College of Arts and Sciences
Ricardo Jacquez	Interim Department Head, Civil and Geological Engineering
Glenn Kuehn	Interim Department Head, Chemistry and Biochemistry
Kenneth Martin	Professor, Finance
Luis Vazquez	Associate Dean, Graduate School
Kenneth White	College Professor, Civil and Geological Engineering

Ex-Officio Members

Wanda Eastman	Faculty Senate Chair, 2007-2008
Christopher Erickson	Faculty Senate Vice Chair, 2008-2009

Scott Moore	Dean of Students
Gerard Nevarez	Director, Office of Institutional Equity
Marisa Ortega	President, ASNMSU, 2007-2008
Joseph J. Pfeiffer, Jr.	Faculty Senate Chair, 2008-2009
D'Anne Stuart	Director, Human Resources

Two additional students (Lindsey Bilovesky and Stephanie Warriner) were appointed to the committee but were not able to attend.

Documents Reviewed by Task Force

- Memoranda supplied by Office of Institutional Equity and Office of Human Resources
- NMSU Policy Manual
- Email correspondence among faculty, students, and administrators following non-renewal of Dr. Bird and Dr. Moraros
- Newspaper articles and web postings
- Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments (American Association of University Professors)

We now present the issues considered by the Task Force. Each takes the form of the question being considered, and information that is relevant to the question. We then present our findings and recommendations.

A. Was University policy followed in the conversion of non-tenure track positions to tenure track positions?

Conflicting reports exist in the media concerning the appointments of Dr. Bird and Dr. Moraros. To clarify, the following time line lists the positions and dates of their employment at NMSU.

Process Dates:

Fall 2002-2006	Dr. Bird and Dr. Moraros worked either as temporary college faculty or as graduate assistants.
January 11, 2007	Dr. Bird and Dr. Moraros were hired as College Associate Professors (non-tenure track) on 0.5 FTE (half time) appointments from a regionally competitive pool advertised in fall 2006.
April 2, 2007	Memos were issued converting the two 0.5 FTE non-tenure track positions to two full time tenure track (Assistant Professor) positions effective August 16, 2007. The memos were signed by Interim Department Head Stephen Anderson, Dean Jeffrey Brandon and then-Provost William Flores.

Current University Policy is silent on the subject of position conversions from non-tenure track to tenure track. However, standard protocols within most colleges concerning the conversion of non-tenure track positions to tenure track positions involve discussions with senior faculty to allow for the vetting of the qualifications of the faculty to be converted to tenure track. Tenure track positions normally require a higher standard of scholarship than is true for college faculty positions.

Findings:

When Dr. Bird's and Dr. Moraros's positions were converted in 2007, there was no explicit University Policy concerning the conversion of non-tenure track positions to tenure track positions. However, there was a standard practice in most colleges that the conversion of a non-tenure track position to a tenure track position required an in-depth discussion of the expectations of the new position. If the new position was going to be filled by a college track faculty member, then an open discussion with senior faculty of the individual's qualifications versus the expectations of the new position was expected.

It should be noted that there is no evidence that the qualifications of Dr. Bird and Dr. Moraros were examined by senior faculty as part of the process of changing their positions from non-tenure track to tenure track. Both Dr. Bird and Dr. Moraros were treated favorably in comparison to standard procedures in vetting of their qualifications, in speed of conversion of part-time non-tenure track positions to full-time tenure track positions, and in salary levels, which were higher than average for assistant professors.

Recommendation 1:

Conversion of non-tenure track positions to tenure track positions should involve an approval process that is clearly laid out. Moreover, this process should include both faculty and administrative input. This recommendation is incorporated as part of the new Promotion and Tenure Policy, which becomes effective August 1, 2008. The new policy requires a national search before conversion of college faculty to tenure track (see Section 5.90.3.8.4).

B. Was University policy concerning non-renewal followed?

The time line regarding the non-renewal of Dr. Bird and Dr. Moraros follows:

Process Dates:

August 16, 2007	Dr. Bird and Dr. Moraros began their tenure track status as Assistant Professors.
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- February 6, 2008 A meeting with the Provost , Dean , and Department Head took place to discuss the possible non-renewal of Dr. Bird and Dr. Moraros.
- February 7, 2008 The Department Head met with the Department Promotion and Tenure Committee to seek their input on the performance of all first-year, tenure track faculty in the department (Dr. Yelena Bird, Dr. John Moraros and Dr. Susan Wilson).
- February 12, 2008 Preparation of the non-renewals of Dr. Bird and Dr. Moraros was completed and signed by the Department Head, Dean, and Provost.
- February 13, 2008 Dr. Bird and Dr. Moraros were notified of their non-renewals.

NMSU Policy listing the process that is to be followed in the event of a contract non-renewal can be found in section 5.98 of the Policy Manual, which is attached to this report. The part of the policy relevant to the cases of Dr. Bird and Dr. Moraros is that section concerning faculty in the first year of service. The policy requires that senior faculty in the department be consulted and that affected faculty members be notified at least three months prior to the end of the contract. Dr. Bird and Dr. Moraros were given at least three months notice.

The policy related to consultation with senior faculty is as follows:

Although no cause for non-renewal need be given, Department Heads must consult with senior faculty of the department before any recommendation of non-renewal is forwarded to the dean.

Dr. James Robinson, the Department Head of Health Science, called a meeting of the departmental Promotion and Tenure Committee and asked the committee to discuss all first year tenure track faculty members who were in their trial periods and thus subject to non-renewal. The Department Head did not disclose to the committee that he was considering non-renewal for Dr. Bird and Dr. Moraros. According to the Department Head, he informed the committee that he was having the meeting “to gather information related to some administrative issues related to tenure track faculty that was time sensitive.”

Subsequently, after consultation with Dr. Jeffrey Brandon, Dean of the College of Health and Social Services, and Dr. Waded Cruzado, Executive Vice President and Provost, Dr. James Robinson decided to recommend non-renewal of both Dr. Bird and Dr. Moraros. This decision was affirmed by Dean Brandon and Provost Cruzado.

Findings:

The policy related to non-renewal of first-year tenure track faculty members was followed. However, the Task Force recommends changes be made to the non-renewal policy.

Recommendation 2:

Section 5.98 of the NMSU Policy Manual should be amended by replacing the requirement that senior faculty be consulted in cases of non-renewal to an explicit requirement that the department Promotion and Tenure Committee be consulted. Moreover, it should be made clear in the Policy Manual that the consultation take place in the form of a meeting and that the Department Head identify faculty members at risk for non-renewal. In addition, the Department Head must provide the committee with all relevant information, to the extent allowed by law, related to the non-renewal. These policy changes will afford greater opportunity for effective counsel and for achieving consensus within the department prior to an action.

Note: Promotion and Tenure Committees have a special responsibility to understand NMSU's policies regarding non-renewal, promotion and tenure, and to understand the important role of confidentiality in personnel matters. Therefore, the Promotion and Tenure Committee of each department should be a more effective consultative body than a gathering of senior faculty.

Recommendation 3:

Department Heads and Deans play a major role in mentoring junior faculty members and consequently should receive intensive training in NMSU Policies dealing with non-renewal, promotion, and tenure.

C. Are University policies and procedures clear regarding filing of employee grievances?

University Policy is clear on the internal appeal process and procedures related to filing grievances based on discrimination. Section 4.05.40 of the NMSU Policy Manual provides clear, well defined, and easy to follow information, including: applicable state and federal laws, appropriate definitions of conditions, and a description of the procedures to be followed, including Institutional Equity Review (Informal Complaint and Formal Grievance) and Administrative Review.

In the cases of Dr. Bird and Dr. Moraros, Mr. Gerard Nevarez, Director of the Office of Institutional Equity (OIE), states that Ms. Angela Velasco of the OIE explained the appeal process to Dr. Moraros on February 14, 2008, and provided him with the appropriate forms and relevant sections of the University Policy Manual for use in filing

a complaint. Moreover, the OIE extended the deadline for filing the formal grievance beyond the 15 working days prescribed by the policy manual. On two separate occasions, correspondence explaining grievance procedures was sent to Dr. Bird and Dr. Moraros by certified mail. On a third occasion, correspondence was sent via email, certified mail, and by hand-delivery to the respective departmental mail boxes of Dr. Bird and Dr. Moraros. The registered mail was returned as undelivered. Dr. Moraros did respond to an email indicating that he would soon file a formal grievance with the New Mexico Human Rights Department and the United States Equal Employment Opportunity Commission (U.S. EEOC). On May 12, 2008 Dr. Bird and Dr. Moraros filed individual discrimination charges with the U.S. EEOC. Due to a U.S. EEOC administrative error, NMSU was not notified of this filing until June 2, 2008. To this date (June 12, 2008), neither Dr. Bird nor Dr. Moraros has filed an internal discrimination complaint form with the NMSU OIE.

On May 7, 2008, the Las Cruces Sun-News provided NMSU Officials with copies of internal complaint forms allegedly filed by Dr. Bird and Dr. Moraros on March 25, 2008. The Office of Institutional Equity maintains that these forms have not been filed with any representative of the OIE.

Findings:

University Policy is clear on the internal appeal process and procedures related to filing grievances based on discrimination. Records in OIE clearly delineate the information and guidance provided to Dr. Bird and Dr. Moraros regarding filing of a grievance. To date, Dr. Bird and Dr. Moraros have not followed University procedure in filing a formal complaint with OIE. Repeated offers by the University to Dr. Bird and Dr. Moraros inviting them to file formal grievances implied that the normal limit of 15 working-days allowed to file a formal grievance from the date of incident had been extended. Moreover, correspondence from the University to Dr. Bird and Dr. Moraros took place after the required 15-day limit, thus providing them an extension to the policy time limit.

Recommendation 4:

NMSU should develop a policy of explicitly communicating to individuals who have complained of discrimination when the time limit for filing a grievance has been extended. The policy should also explicitly state that the deadline may be extended in the event of extenuating circumstances following a request from the employee or from University Administration. Moreover, NMSU should explore the possibility of adopting a policy that extends the current limit of 15 days for filing formal grievances.

D. Was University policy followed in communicating to the affected faculty the decision not to renew their respective contracts?

Current University Policy states that “[d]uring the trial period, non-renewal of the contract may be without implication of criticism or specification of cause (Section 5.98).”

Non-renewal without cause can be to the benefit of the faculty member. If cause is given, the non-renewed faculty member can be required to reveal the reason for dismissal to potential new employers, which could adversely affect future employment opportunities. On the other hand, failure to communicate reasons for dismissal can lead to misunderstandings. For example, if cause for non-renewal is not given, the faculty member may assume that the reasons for non-renewal are not legitimate and will consequently seek re-instatement; an action which the faculty member might not have pursued had the faculty member known the cause of non-renewal. The American Association of University Professors (AAUP) states:

“The Association’s extensive experience with specific cases since 1971 has confirmed its conclusion that the reasons in support of the faculty member’s right to be informed outweigh the countervailing risks. (AAUP, <http://www.aaup.org/AAUP/pubsres/policydocs/contents/nonreapp-stmt.htm>).”

The AAUP recommendations are included as an Appendix.

Finding:

Current NMSU Policy does not require the reason to be given for non-renewal.

Recommendation 5:

Section 5.98 should be amended to require the reason for non-renewal to be stated, either verbally or in writing, if so requested by the faculty member subject to non-renewal, thereby placing the decision in the hands of the faculty member.

E. Is University Policy concerning non-renewal of contracts communicated effectively to faculty?

It is in the best interest of New Mexico State University that policies are clearly and fully communicated to faculty, especially untenured faculty, as to the circumstances under which non-renewal may occur. To accomplish this goal, it is critical that Department Heads, Associate Deans, Deans and other relevant Administrators be fully informed as to the policy. While policy manuals are available on NMSU’s web site, historically these manuals have not been displayed prominently.

Comment: The University recently completed an extensive two year long re-evaluation of its Promotion and Tenure Policy resulting in a major revision of the policy that will go into effect August 1, 2008. The new policy requires that each new faculty member be provided with a copy of the P&T Policy with their employment package.

Findings:

Department Heads at NMSU should be more proactive in communicating information to faculty, especially new faculty, regarding policy and procedures for non-renewal of contracts.

Recommendation 6:

In the first semester of employment, the Academic Department Head should inform new faculty members about NMSU policy concerning non-renewal of a contract. Department heads should review general information about Promotion and Tenure policies with junior faculty members on a regular basis.

F. Were channels of communication open within the Department of Health Science and in the College of Health and Social Services?

Although the committee is not in a position to fully understand the prevailing atmosphere in the Department of Health Science prior to the non-renewals of Dr. Bird and Dr. Moraros, emails that have been read by committee members indicate some breakdown in communication between faculty and students and the department head. Moreover, there was a breakdown in communication between the college administration and the Department of Health Science. Maintaining open lines of communication between faculty and the academic department head, between faculty and college dean, and between academic department head and dean is critical in an academic setting. Faculty members should feel confident that their concerns will be listened to and taken seriously by college administrators. Open communication is an important component of shared governance. It is especially important that deans remain engaged with their faculty and with their department heads. Such engagement allows a dean to intervene quickly when problems arise within a department.

Findings:

Evidence available to the committee indicates that there was a breakdown in communication within the Department of Health Science and within the College of Health and Social Services.

Recommendation 7:

Deans and Academic Department Heads must ensure open lines of communication between faculty and the academic department head, and between faculty and the college administration. Deans and Academic Department Heads should be evaluated on their effectiveness in maintaining open lines of communication.

G. Did President Martin deal effectively with the press regarding the issue of non-renewal?

Dr. Michael V. Martin, President of NMSU, made a number of inappropriate statements during his initial contact with the press concerning a protest by students over the non-renewal of Dr. Bird and Dr. Moraros. These comments gave the impression that Dr. Martin and, by implication, the University did not take seriously the protest by students who were seeking the reinstatement of Dr. Moraros and Dr. Bird. In fact, in contrast to Dr. Martin's statements, there is a strong consensus among faculty, staff and the administration of the University that peaceful student protests are an important part of the free flow of ideas critical to the intellectual life of the University. All indications are that Dr. Martin, despite his initial statements, shares this view. In particular, Dr. Martin has apologized in person and in an open letter to the University Community, which was reprinted in the Sun-News, concerning his initial comments. He is aware that his comments were poorly chosen.

Findings:

Dr. Martin's initial comments did not reflect the principles of the University and were counterproductive.

Recommendation 8:

Top Administrators, Members of the Board of Regents and other NMSU Representatives should receive training in media relations from University Communications as they start their jobs and refresher training should be offered on a regular basis.

H. Should confidentiality be maintained in personnel matters?

University Policy is clear that confidentiality is to be maintained in personnel matters (see, e.g., Section 3.19.30, Section 3.25, Section 3.94, and Section 4.05). Confidentiality is given to employees in personnel matters for several reasons. First, a lack of confidentiality may discourage those who might otherwise be willing to come forward, especially in the case of an employee bringing action against a supervisor. Second, confidentiality prevents baseless claims against an employee from being made public. Finally, confidentiality helps prevent abuse of personnel procedures by supervisors.

The issue arises, if an employee makes information public about personnel procedures in which the employee is involved, is this in effect tantamount to waiver of confidentiality? Should the University then be free to provide its perspective on matters? To both of these questions we answer "No."

When accusations are made in the press to which the University does not fully respond due to confidentiality, the resulting stories can be misleading, giving NMSU a negative image in the eyes of the public. Nevertheless, violating confidentiality would, as pointed

out above, have a chilling effect, might result in the publication of baseless accusations, and might be subject to abuse. Moreover, the University could easily be viewed as a bully, attempting to destroy any person who dared to question its actions. Such an image would do far more long-term harm to the institution than an appearance of secrecy. Therefore, even though it is difficult to remain silent when attacked, especially when these attacks are carried out in public, we strongly recommend that confidentiality be maintained in personnel matters at all times, even when the affected personnel make accusations through the press. Continuation of the “no comment” policy on personnel matters may mean that NMSU is subject to unfavorable publicity in the short run, but it is in the long term best interest of the institution to maintain the current policy.

Findings:

Confidentiality in personnel matters serves a useful purpose. The benefits of NMSU’s Policy of Confidentiality in personnel matters outweigh the possible advantages of directly responding to allegations made against the University. It protects every employee while inhibiting the University from attacks on individuals—attacks which would negatively impact the public’s perception of NMSU.

Recommendation 9:

NMSU should continue its policy of not commenting on personnel matters. The University should more clearly articulate the reasons for this policy.

I. Was confidentiality maintained in communicating non-renewal of contracts to Dr. Bird and Dr. Moraros?

Dr. Bird and Dr. Moraros were informed that their respective contracts would not be renewed for the forthcoming academic year by their department head, Dr. James Robinson. This information was communicated to them simultaneously, when Dr. Bird and Dr. Moraros were together in Dr. Robinson’s office. This manner of communication violated the University’s Policy of Confidentiality. Dr. Bird and Dr. Moraros were independent employees of New Mexico State University and they were employed into separate faculty positions. Each should have been informed independently of the decision regarding non-renewal of their respective contracts.

Findings:

The manner in which Dr. Bird and Dr. Moraros were informed that their respective contracts would not be renewed breached the University Policy of Confidentiality.

Recommendation 10:

Individuals should be informed of personnel matters privately and individually, irrespective of any relationship that might exist between the faculty members.

Department Heads should be made aware of this requirement as part of a thorough training program.

J. Did NMSU communicate effectively with the public about the non-renewals of Dr. Bird and Dr. Moraros?

A public university has a responsibility to communicate effectively with the public whose taxes support it. But achieving this goal can be difficult, especially when the University chooses not to respond publicly to accusations in the press. In this brave new world of blogs, internet responses to newspaper articles, and anonymous comments given prominent space in newspapers, it is incumbent on the University to develop effective strategies for communicating with the public, especially during times when the institution is subjected to severe criticism.

Not surprisingly, most people are not familiar with the nuances of the tenure system. This is true of the public and is also true of the media. But the media plays a special role by informing the public as to the issues involving the University. Therefore, when it is relevant, it is important that the University take special care to inform the media regarding issues of non-renewal, tenure, and promotion.

Effective communication is made particularly difficult in personnel matters by the policy of confidentiality. This is evident in the media coverage surrounding the non-renewal of Dr. Bird and Dr. Moraros .

Findings:

University Communications has not adequately informed the general public, especially the media, about the promotion and tenure process, including non-renewal of contracts. This contributed to misstatements in the media regarding the non-renewal of the contracts of Dr. Bird and Dr. Moraros.

Recommendation 11:

Links to promotion and tenure and other personnel policies should be displayed prominently on the NMSU web page. Media should be referred to these policies as needed.

Recommendation 12:

University Communications should develop a crisis communication plan, in order to more quickly and more effectively inform the public regarding NMSU Policies, Procedures, and actions in the event of highly publicized emergencies and controversies. This plan should be developed in partnership with external specialists in the field of crisis communications.

Conclusion

Based on the events of this case, and the findings of the task force, it is recommended that the Executive Vice President and Provost's Office of NMSU review the training programs for administrative positions on campus. Specific emphasis should be placed on policies relevant to issues such as promotion and tenure, and harassment and discrimination. Emphasis should also be placed on effective communication among administrators, faculty and students. The training program should be periodically reviewed and updated based on modifications to University Policies and Procedures.