

Policy 705.5 – Discrimination Grievance

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Approved By:

References: BOR 203.5.2

I. POLICY

The University of Montana Western provides a grievance process whereby any faculty member, student, staff member or applicant for admission to or employment alleges discrimination with any program, activity, or organization conducted, sponsored, or contributed to by the University or regarding any University policy or regulation or any official action of any University employee.

II. PURPOSE

The University of Montana Western has adopted this procedure, as required by federal law, to provide for: (1) impartial investigation of complaints alleging prohibited discrimination; (2) appropriate due process for any individual against whom a complaint of prohibited discrimination is made; and (3) prompt and equitable resolution of complaints when prohibited discrimination has occurred.

III. PROCEDURE

In all cases, the University of Montana Western seeks to fully meet its dual obligations to stop or prevent prohibited discrimination, and to provide appropriate due process for anyone against whom a complaint of prohibited discrimination is made. Every effort will be made to encourage informal resolution of complaints through mediation and agreement. When informal resolution is not possible, the procedure provides for investigation and determination if prohibited discrimination has occurred. A Complainant dissatisfied with the findings or recommendations for discipline of the investigating officer may appeal to the Discrimination Grievance Committee. Any individual accused of discrimination that disputes the findings or recommendation of the investigating officer will be afforded due process through applicable collective bargaining agreement or personnel policy. A faculty member may be disciplined only under the discipline/discharge provisions of the MUS-Faculty Association Local 4323 MEA-MFT, NEA, AFT, AFL-CIO collective bargaining agreement.

A. University Discrimination Grievance Committee

1. Jurisdiction of the Committee

a. Scope of Jurisdiction

The University Discrimination Grievance Committee has jurisdiction over any complaint of discrimination (other than those which may be initiated under the grievance procedures in existing collective bargaining agreements). Complaints may be initiated by any faculty member, student, staff member or by an applicant for admission to or employment with any program, activity, or organization conducted, sponsored, or contributed to by the University or regarding any University policy or regulation or any official action of any University employee. The jurisdiction of the committee includes complaints arising under any state or federal nondiscrimination law or regulation or University policy including the following: (a) Executive Order 11246 as amended by Executive Order 11375 and implemented by Revised Order No. 4; (b) Civil Rights Act of 1866; (c) Civil Rights act of 1871; (d) Titles VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000d) as implemented by 45 CFR part 80; (e) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et. seq.) as implemented by 45 CFR part 86; (f) Section 799A and 845 of the Public Health Service Act (42 U.S.C. 295H-9 and 298B-2); (g) Sections 503 and 504 of the Rehabilitation Act of 1972 (29 U.S.C. 794); (h) Age Discrimination Act of 1975; (i) Age

Discrimination in Employment Act of 1967 as amended (29 U.S.C. 621); (j) Equal Pay Act of 1963; (k) Vietnam Era Veterans Readjustment Act of 1974; (l) Montana Fair Labor Practices Act (RCM 1947, Sec. 64-301 et. seq.) as amended by Chapter 524, Law of 1975; (m) Chapter 487 Laws of 1975 (Montana Administrative Code Title 24, Chapter 9); (n) Americans with Disabilities Act; (o) Any other state or federal laws or regulations or contractual or legal relationships, or University policy or regulation adopted through regular and customary procedures, which impose nondiscrimination requirements, the breach of which would constitute a valid complaint.

- b. The jurisdiction of the committee is specifically limited to questions of discrimination. Neither the review process nor the committee's recommendations should include any substantive matters other than those directly related to discrimination. (For example, the committee should not consider whether or not an employee should have been promoted but whether the denial of promotion was materially influenced by or resulted from discrimination. If the committee finds that the employee was a victim of discrimination, the recommendation would be that the employee be reconsidered for promotion in a manner that would preclude discrimination.)
 - c. **Jurisdiction**
The committee generally does not have jurisdiction over a discrimination complaint until the Complainant has exhausted the "Informal Procedure" and has initiated an appeal from that procedure in the manner specified. Under the following circumstances the committee has original jurisdiction over a complaint though the "Informal Procedure" has not been exhausted:
 - 1) When the Complainant is appealing a matter already reviewed and decided by the Chancellor about which there has been no previous hearing before the committee.
 - 2) When the Complainant alleges discrimination by the UMW EEO/Affirmative Action Officer.
 - 3) When the Complainant demonstrates to the University EEO/AA Officer that the complaint may not reasonably be resolved by means of the informal procedure.
 - 4) When the University EEO/AA Officer refers the case to the committee for decision.
2. **Composition of the Committee**
 - a. **Number of Members:** The committee shall have eight (8) permanent members including the Chair.
 - b. **Representative Membership:** Of the eight regular members, two (2) shall be students, two (2) shall be members of the faculty, two (2) shall be members of the non-academic staff, and two (2) shall be representatives of the administration.
 3. **Selection of Members**
Eight regular members shall be appointed by the Chancellor from among four (4) candidates nominated by each of the following groups, and the Chancellor shall also designate one (1) alternate from each of these groups:
 - a. Executive Committee of the Faculty Senate
 - b. Executive Committee of the Staff Senate
 - c. ASUMW President with the approval of Student Senate
 - d. Chancellor's Staff
 4. **Quorum**
Five (5) of the eight (8) regular members constitute a quorum, but no less than one (1) from each of the four constituent groups specified in B.2. above.

5. Term of Appointment
 - a. Regular Appointments: To assure cumulative experience and development of expertise as well as continuity and uniformity of decisions, the terms of regular members will be of extended duration and staggered. One student shall be appointed for one (1) year and the other student for two (2) years. Thereafter all student appointments shall be for two (2) years. One faculty member, one member of the non-academic staff, and one administrator shall be appointed for four (4) years and the remaining member from each group shall be appointed for five (5) years. All subsequent appointments from these groups shall be for five (5) years.
 - b. Reappointments: Any member whose term has expired and who is willing to continue to serve on the committee may be reappointed by the Chancellor.
 - c. Temporary Appointments: The Chancellor may appoint a person to serve temporarily as a member of the committee to fill a vacancy, ensure a quorum, or in response to a request from the Chair to avoid delay in proceedings. The term of temporary appointment continues for the duration of the proceedings or until the temporary appointee is replaced by a regular member.
6. Removal of Members
 - a. The Chancellor may either permanently or temporarily remove or replace any regular member of the committee under the following circumstances:
 - b. In response to a request from those responsible for the nomination of the member.
 - c. In response to a request from a majority of the committee members.
 - d. In response to a request from the EEO/AA Officer.
 - e. In response to a request from a committee member that he/she be excused.

If any person or group other than the member him/herself requests removal, that member will have an opportunity to rebut any evidence presented in support of the request for removal.

7. Appointment of Officers
 - a. Appointment of Chair: The Chancellor shall appoint the Chair for a two-year term.
 - b. Appointment of Vice-Chair: The Chancellor shall appoint the Vice-Chair for a two-year term.
8. Authority of the Committee

The committee has the authority to:

 - a. Require the presence and testimony of witnesses and other evidence held by the University or any student or University employee.
 - b. Arrange with the University EEO/AA Officer for appropriate funding and staff support to facilitate hearings and investigations.
 - c. Hold pre-hearing conferences.
 - d. Issue hearing orders.
 - e. Hold formal hearings and control conduct of such hearings.
 - a. Make decisions, findings of fact, and recommendations to the Chancellor by vote of a majority of the regular members involved in the hearing process.

B. Grievance Procedure for Discrimination Complaints

1. Informal Procedure

- a. Initiating the Complaint

Any faculty member, student, staff member, or applicant for employment or admission to the University who claims to have been unlawfully discriminated against due to any University regulation or policy or the official action of any University employee may, within sixty (60)

calendar days of the alleged discriminatory occurrence, initiate informal complaint proceedings by submitting a written summary of complaint to the University's EEO/AA Officer, Business Services, James E. Short Center, (406) 683-7530. This complaint procedure is also available in Braille, tape cassette, a large print format, and electronic text.

b. **Action on Complaint**

The University EEO/AA Officer will conduct a prompt and thorough investigation, ordinarily within ten (10) days of receipt of the complaint, as follows:

- 1) Investigate and determine the nature and extent of the problem, including whether or not the problem, if any, warrants investigation under this procedure:
 - a) Immediately upon initiating an investigation, the EEO/AA Officer will inform the individual accused of discrimination (hereafter "Respondent") of the identity of the complainant, and of the specific charges. Adverse action cannot be taken based on an anonymous complaint.
 - b) The EEO/AA Officer will provide the Respondent with an opportunity to answer the allegations.
 - c) The EEO/AA Officer will investigate allegations made of specific discriminatory actions by the Respondent(s), but limit the investigation to acts within the jurisdiction of this policy.
 - d) The EEO/AA Officer will conduct an impartial investigation of the facts alleged in the complaint, and afford the Respondent fair opportunity to respond to them.
- 2) Convene meetings of appropriate personnel, including the Complainant and the Respondent, if necessary, in order to seek informal resolution of the complaint.
- 3) Notify the Complainant and the Respondent in writing of the current status of the complaint, including whether a specified amount of additional time is needed to investigate or resolve the complaint, and of any further remedial action contemplated.
- 4) The EEO/AA Officer may encourage and facilitate informal resolution through discussion, mediation and agreement when appropriate and desired by the Complainant and/or Respondent, without making a finding of whether or not prohibited discrimination has occurred. When informal resolution is not feasible or appropriate, the EEO/AA Officer will determine whether or not prohibited discrimination has occurred based on the evidence obtained through investigation. The determination will be made in accordance with applicable law, based on a preponderance of substantial, credible evidence, and will be stated in writing. If the EEO/AA Officer finds that prohibited discrimination has not occurred, the Complainant may appeal this determination through the Formal Procedure below. If the EEO/AA Officer finds prohibited discrimination has occurred, the Respondent may appeal any discipline recommended for Respondent through the appropriate disciplinary procedure under applicable collective bargaining agreement or University Personnel Policy at the time he or she is notified disciplinary action will be taken.
- 5) Both Complainant(s) and Respondent(s) may have privacy rights and reasonable expectations of confidentiality in the investigation of matters subject to this procedure. In addition, appropriate, reasonable expectations of confidentiality are an element of due process provided. The EEO/AA Officer keeps confidential the complaint, witness statements, and any other information provided by the Complainant or Respondent and discloses such information only to the Complainant or Respondent or witnesses, as necessary to give fair notice of the

charges and to conduct the investigation. The report and conclusion after investigation are disclosed only to the Complainant, individual Respondent, and University officials as necessary to prepare for subsequent proceedings (e.g., University Chancellor and University Legal Counsel). The EEO/AA Officer will advise Complainant, Respondent and witnesses that the information discussed is confidential, and should not be released or discussed except with the Complainant or Respondent for the purposes of the investigation or preparation for subsequent proceedings. An individual Complainant or Respondent may choose to waive his/her individual right to confidentiality in information personal to him/her by disclosing it to others outside the process. However, an individual waiving his/her own right of privacy is not thereby free to breach the confidentiality rights of others in the process. Neither the other party to the complaint, nor the University shall be considered responsible for breach of confidentiality by reason of such a waiver by the individual Complainant or Respondent. A subsequent appeal hearing may be open or closed, according to the provisions of “3d” below.

2. Formal Procedure

a. Appeal from the Informal Procedure to the Formal Procedure

1) Written Appeal

If the Complainant chooses to appeal the decision of the EEO/AA Officer, a written request for a hearing before the University Discrimination Grievance Committee must be filed within ten (10) days of receipt of the decision. The request for a hearing must be filed with the EEO/AA Officer.

2) Notice of Hearing

Within ten (10) days of receipt of the written request for a hearing, the EEO/AA Officer will notify the Complainant and the Respondent of the time and place of the formal hearing before the Discrimination Grievance Committee. The hearing will be scheduled within thirty (30) days of receipt of the written appeal.

b. Preparation for the Hearing

1) Complainant's Statement

At least ten (10) days prior to the hearing the Complainant must submit to the EEO/AA Officer and Respondent the following information:

- a) Detailed statement of facts upon which the allegations of discrimination are based.
- b) Names and addresses and anticipated testimony from witnesses to be called.
- c) Copies of any documents that will be submitted as evidence.
- d) Additional materials the Complainant wishes the committee to obtain prior to the hearing.
- e) Reference to the law or regulation alleged to be violated.
- f) Specific remedy(ies) requested.
- g) Preferences for an open or closed hearing.
- h) Whether he/she will be represented by legal counsel and the identity of the counsel.

2) Respondent's Statement

At least ten (10) days prior to the hearing the Respondent(s) will submit to the EEO/AA Officer and Complainant the following:

- a) Statement of facts relevant to the Complainant's allegations.
- b) Names and addresses of witnesses and summary of testimony.
- c) Copies of documents or other materials to be submitted as evidence.

3) Legal Counsel Representation

If the Complainant chooses to be represented by counsel, the Respondent will be represented by University Legal Counsel.

4) Forwarding Appeal Documents.

The EEO/AA Officer will forward copies of the above materials to the members of the Discrimination Grievance Committee at least five (5) days prior to the hearing. At that time the EEO/AA Officer may submit any additional evidence relevant to the complaint.

3. Pre-hearing Conference

- a. At any time within five (5) days prior to the date of the formal hearing the chairperson of the University Discrimination Grievance Committee may call a pre-hearing conference of all committee members and any other persons (including the Complainant).
- b. The committee will discuss and decide the following:
 - 1) Whether the Chancellor of the University should be requested to appoint legal counsel to the hearing committee.
 - 2) Whether the evidence presented is complete, an additional investigation should be required, or additional witness called.
 - 3) Whether the University Discrimination Grievance Committee should conduct a meeting of the Complainant and other appropriate parties in an effort to settle the complaint without a formal hearing.
- c. With concurrence of a majority of the University Discrimination Grievance Committee, the Chair may decide to set aside the hearing date for any period up to ten (10) days for additional investigation, to obtain additional witnesses or evidence, or to schedule a settlement conference with the Complainant and any other appropriate parties for purposes of settlement of the appeal without a formal hearing.
- d. The Hearing
The Chair of the University Discrimination Grievance Committee will conduct the hearing. The hearing will be a non-adversarial proceeding, and strict rules of evidence will not be applied. The hearing will nevertheless be conducted to assure fairness and accuracy in fact-finding. The Chair will be the final arbiter of all matters of procedure. In the absence of strong reasons to the contrary, preference will be given to the Complainant's request for an open or closed hearing.
- e. The Decision
Within ten (10) working days of the conclusion of the formal hearing the University Discrimination Grievance Committee will submit a decision in writing to the Chancellor, the Complainant, the Respondent, and the University EEO/AA Officer. A finding of discrimination and recommendation for redress must be supported by a majority of the committee members voting. The determination will be made in accordance with applicable law, based on a preponderance of substantial, credible evidence. The written decision will contain the following:
 - 1) Summary of the allegations of the Complainant.
 - 2) Summary of the Respondent's position.
 - 3) Statement of the relief sought by the Complainant.
 - 4) Specific citations of any laws or regulations alleged to be violated.
 - 5) Statement of the findings of fact and conclusions of the committee regarding whether the evidence substantiated the allegations of the Complainant.
 - 6) Recommendations regarding redress of the Complainant's grievance as well as policy or procedural changes required in order to preclude further discrimination.
- f. Action on Decision

Within ten (10) days of receipt of the committee's decision, the Chancellor will notify the committee Chair, the EEO/AA Officer, and the Complainant in writing of the decision relative to each of the recommendations forwarded by the University Discrimination Grievance Committee. The decision will include:

- 1) The actions that have been or will be taken regarding each recommendation.
- 2) The time frame in which these actions will be accomplished. The EEO/AA Officer will distribute copies to committee members and the Respondent.

g. Appeal to Regents

Within thirty (30) days of receipt of the Chancellor's response to the recommendations of the University Discrimination Grievance Committee, a Complainant may appeal the Chancellor's decision to the Commissioner of Higher Education of the Montana University System (see attached Addendum A, Board of Regents policy on appeals).

h. Signed Acceptance of Resolution

Prior to implementation of any remedial action approved by the Chancellor, the Complainant will sign a release indicating acceptance of the proposed remedial action as complete satisfaction for any and all claims or causes of action relative to the complaint.

IV. AUTHORITY

BOR 203.5.2

V. RESPONSIBILITY

Vice Chancellor for Administration & Finance/Student Affairs, Chancellor, EEO/Affirmative Action Officer, University Discrimination Grievance Committee

ADDENDUM A

Montana Board of Regents of Higher Education

Policy and Procedures Manual

SUBJECT: GOVERNANCE AND ORGANIZATION
SECTION: 203.5.2 Appeals (page 1 of 3)
EFFECTIVE: 10/25/90
ISSUED: 12/26/90

I. PREAMBLE

The purposes of this procedural policy include, but are not limited to the following:

1. To assure to the constituencies governed by or served by the Board of Regents, the existence of an administrative procedure to exercise any legal right due them from the Board.
2. To assure the Board of Regents of Higher Education that the plenary authority they maintain over the Montana University System and the Vocational Technical Centers is exercised with knowledge of the facts relevant to any decision.
3. To minimize litigation between the University System or the Vocational Technical Centers and their constituencies by allowing the Board of Regents to become informed as to any disagreement and to allow the Board to exercise its authority to remedy a grievance.

II. BOARD POLICY

1. Any party adversely affected by the final decision of a center director or campus president may appeal, within thirty (30) days of the director's or president's decision, to the Commissioner of Higher Education, unless a Board of Regents policy or an employment agreement explicitly provides that the decision of the director or president is the final administrative review. The Commissioner's decision may be appealed to the Board of Regents as provided below.
2. The Commissioner may in his or her discretion limit the scope of review to procedural matters.
3. The Commissioner may not substitute his or her judgment for the substantive decision made by the director or president, unless the director or president's decision was arbitrary and capricious, or clearly erroneous based on the facts in the record.
4. This policy does not apply to any matters that are subject to the grievance procedure of a collective bargaining contract.
5. Appeals of decisions initially made by the Commissioner may be appealed to the Board pursuant to procedure #6 below.

III. PROCEDURES

1. Appeals must be in writing, addressed to the Commissioner, and shall state the decision being appealed, the basis for the appeal, and the relief desired. Upon receipt of the appeal, the Commissioner shall notify the party of the scope of review and the procedure to be followed.
2. A party must use the procedures established at the campus level before appealing to the Commissioner. In the absence of applicable procedures, the party may appeal a determination by a university official to the immediate supervisor. The final administrative decision at the campus level is that of the director or president.
3. The Commissioner may attempt to achieve an informal disposition of the appeal. An informal disposition is binding only if the appealing party and the campus president agree to the proposed resolution.
4. Subject to the provisions of paragraph 5, the appeal will be decided based upon materials submitted by the appealing party and by the director or president. The parties to the appeal have no right to introduce materials or raise issues that have not been part of the campus record. A full or partial hearing may be conducted, if
 - a) The right to a hearing is established by a Board of Regents' policy on the particular subject; or
 - b) Failure to conduct a hearing would violate the party's constitutional due process rights.
5. The Commissioner may request that the parties submit additional materials or he may on his own initiative take notice of other relevant matters. The Commissioner may remand the matter back to the campus or he may affirm, reverse, or modify the campus decision or he may present the appeal to the Board for its consideration.
6. Within 30 days of the Commissioner's decision a party may appeal the decision to the Board. Such appeals must be in writing, be addressed to the Board in care of the Commissioner, shall state the decision being appealed, the basis for the appeal, and the relief desired. The Commissioner shall place the matter on the Board's agenda, though the Board may choose not to entertain the appeal. If the Board accepts the appeal, it will specify the scope of review and may request a full or partial hearing. The decision of the Board affirming, reversing, modifying or refusing to hear the appeal is the final administrative determination.
7. No matters subject to this policy shall be considered final until the procedures of this policy have been used to present the matter to the Board of Regents. When a party fails to exercise the appeal rights guaranteed by this policy the party accepts the lower level decision as final and waives the right to contest the matter further.

IV. HISTORY

By-laws, Article VIII (rescinded February 15, 1977); Item 15-001-R0277, February 15, 1977 (rescinded). Item 21-003-R0778, Appeals; Montana University System, November 2, 1979, June 21, 1985, and October 25, 1990.