

September 16-17, 2020

INFORMATION ITEM

Request for Authorization to Revise BOR Policy 203.5.2 - Appeals

THAT

The Montana Board of Regents adopts the recommended revisions to Policy 203.5.2 – Appeals.

EXPLANATION

The Board’s appeal policy is set forth in 203.5.2 and outlines the procedures by which a party may appeal a campus decision to the Commissioner and, subsequently, to the Board. The proposed revisions, as shown in the attached document, would revise the appeal policy to:

1. Provide that appeals may be made directly from an affiliate campus to the Commissioner;
2. Clarify that a final campus decision may be issued by the campus president/chancellor or their designee;
3. Provide that the Board’s standard of review is the “arbitrary and capricious” standard -- the same as the Commissioner’s standard of review; and
4. Clarify that the Board may accept an appeal without a full or partial hearing (paper appeal) if it accepts an appeal for review.

The current appeal policy provides that “Decisions of a campus chancellor are appealable to the university president.” However, appeals from MSU and UM may be directly appealed to the Commissioner’s office and then to the Board. OCHE recommends the Board clarify the appeal policy to apply consistently to all campuses across the system. Further, there are instances where it is appropriate for a president or chancellor to delegate their authority to issue a final campus decision to another individual or committee on campus. In those cases, the designee’s decision constitutes the final campus decision that may be appealed to the Commissioner.

Revisions 3 and 4 noted above relate to the Board’s review of the Commissioner’s decision. The appeal policy is currently silent on the standard (level) of review that the Board applies. OCHE recommends the Board clarify that it applies the same standard of review currently provided in the policy for the Commissioner’s review of campus decisions. This standard of review – known as the arbitrary and capricious standard – is the general standard courts apply when reviewing agency decisions. The remaining changes are for readability and organizational purposes and do not change the substance of the policy.

ATTACHMENTS

Attachment #1: Proposed Revisions to BOR Policy 203.5.2