

January 5, 2020

ITEM 192-105-R0121

Request for Authorization to Revise BOR Policy 203.5.2 – Appeals

THAT

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, which is 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 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 authority to issue a final campus decision to another individual or committee on campus. In that instance, the designee’s decision constitutes the final campus decision that may be appealed to the Commissioner and then to the Board.

Revisions 3 and 4 noted above relate to the Board’s review of the Commissioner’s decision. The appeal policy is currently silent on Board’s standard of review. The OCHE legal office recommends the Board clarify that it applies the same standard used at the Commissioner’s level. This standard of review – known as the arbitrary and capricious standard – is the primary 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 Changes to BOR Policy 203.5.2