

MONTANA BOARD OF REGENTS OF HIGHER EDUCATION
Policy and Procedures Manual

SUBJECT: GOVERNANCE AND ORGANIZATION
Policy 203.5.2 – Appeals
Effective May 16, 1966; Issued July 14, 2004

I. Preamble:

- A. 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 is exercised with knowledge of the facts relevant to any decision.
 3. To minimize litigation between the university system and its 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:

- A. Any party adversely affected by the final decision of a university president may appeal, within thirty (30) days of the 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 president is the final administrative review.
- B. Persons alleging that a university system employee has acted in a fashion incompatible with state ethics or conflict of interest statutes may bring that matter to the attention of the chief administrative officer on the involved campus. A campus decision on such a complaint is appealable under this policy once a final decision has been rendered by the university president.
- C. The commissioner may in his or her discretion limit the scope of review to procedural matters.
- D. The commissioner may not substitute his or her judgment for the substantive decision made by the president, unless the president's decision was arbitrary and capricious, clearly erroneous based on the facts in the record, or violated some legally protected right of the appellant.
- E. This policy does not apply to any matters which are subject to the grievance procedure of a collective bargaining contract.
- F. Appeals of decisions made by the commissioner, including decisions made on appeals of final campus decisions, may be appealed to the board pursuant to procedure (F) below.

III. Procedures:

- A. Appeals must be in writing, addressed to the commissioner, and shall contain the decision being appealed, and shall state 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. The appellant shall provide the president with a copy of all material sent to the commissioner.
- B. A party must use the procedures established at the university level before appealing to the commissioner. In the absence of applicable campus procedures, the party may appeal a determination by a campus official to the immediate supervisor. Decisions of a campus chancellor are appealable to the

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university president. The final administrative decision at the university level is that of the president.

C. The commissioner may attempt to achieve an informal disposition of the appeal. An informal disposition is binding only if the appealing party and the president agree to the proposed resolution.

D. Subject to the provisions of paragraph (E) the appeal will be decided based upon materials submitted by the appealing party and by the president. The parties to the appeal have no right to introduce materials or raise issues that have not been part of the university record. A full or partial hearing may be conducted, if

1. the right to a hearing is established by a board of regents' policy on the particular subject matter;
or
2. failure to conduct a hearing would violate the party's constitutional due process rights.

E. 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 university or he may affirm, reverse, or modify the university decision or he may present the appeal to the board for its consideration.

F. 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.

G. 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.

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, October 25, 1990, September 28, 1995, and May 16, 1996; paragraphs renumbered July 14, 2004.