

Subject: Personnel
Policy: Grievance Procedures ~~for Non-Faculty, Non-union Employees~~
Revised: TBD
Effective date: TBD
Review date: TBD
Responsible Party: Human Resources

800.00 Grievance Procedures

~~810.00~~ Grievance Procedures ~~for Non-Academic Employees~~

Modified: November 2001; January 2010, TBD, 2014

~~810.10~~ References

- ~~• Section 203.05.2, "Appeals," Montana University System Policy and Procedures Manual.~~
- ~~• Section 1300.00, "Conciliation and Grievance," MSU Faculty Handbook.~~

~~810.210~~ Applicability

~~Grievance procedures for academic faculty are contained in Section 1300.00 of the MSU Faculty Handbook.~~

A. Employees covered by this grievance policy and procedure are:

A1. Classified employees and non-tenure track faculty who are not part of a collective bargaining unit.

B2. Employees on a Board of Regents Contract; MUS Contract or Letter of Appointment in professional or administrative positions. ~~C. — For administrative/professional employees who also have instructional/research responsibilities, the nature of their grievance will determine the appropriate procedure. A grievance relating to the academic appointment would be filed under the Faculty Handbook grievance provisions (Section 1300.00); a grievance about the professional/administrative appointment would be filed under this procedure.~~

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B. The grievance procedures for Tenure and Tenure Track faculty are contained in Interim Faculty Personnel Procedures (insert link).

D-C. The grievance procedures for Employees represented by a union have their grievance procedures are outlined in the applicable collective bargaining agreement.

D. Grievances alleging discrimination on the basis of sexual harassment or discrimination on the basis of race, religion, sex, sexual preference, age, national origin, color, marital and parental status, creed or political belief, mental or physical handicap or disability, or status as veteran should be referred to the Human Resources/Office of Institutional Equity (OIE) Office. (Reference Section 820.00 of this manual, "Discrimination Complaints") race, color, religion, national origin, ethnicity, creed, service in the uniformed services (as defined in state and federal law), veteran status, gender, age, political beliefs, marital or family status, pregnancy, physical or mental disability, genetic information, gender identity, gender expression, or sexual orientation or preference will be referred to the Office of Institutional Equity for investigation under the Non-Discrimination Policies and Discrimination Grievance Procedures (insert link http://www2.montana.edu/policy/affirmative_action/aa100.html#100.00_Non-Discrimination_Policies).

8101.300 Definition of a Grievance

~~A grievance exists when an employee feels dissatisfied with some aspect of his or her employment and desires remedial action. For classification related grievances, the statutory classification appeal procedures shall be followed. (Reference Section 905.00 of this manual, "Statewide Classification System.")~~

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Employees for whom this grievance policy is applicable may file a grievance if he or she believes the university has failed to follow university policies regarding some aspect of the employee's terms and conditions of employment.

8102.00 Rules of Grievance Processing

A. Reference to "days" refers to working days unless specifically stated otherwise. A working day is defined as all week days, Monday - Friday, which are not designated as university holidays.

B. In computing time periods, the day of the incident for which the designated time period begins is not included.

C. The grievant carries the burden of moving the grievance forward within the time period specified for that step, unless the time period has been extended by mutual agreement of the parties. Failure of the grievant to comply with the established time limits shall result in dismissal of the grievance.

D. If a step in the following procedure is deemed inappropriate (for example, the supervisor is the person alleged to have violated the policy or a second level of supervision does not exist), that step may be bypassed by submitting the grievance to the next step.

8103.00 Steps in Grievance Processing

Most employee concerns can be settled by informally discussing the problem with the immediate supervisor. Employees are encouraged to present work related concerns to their supervisor for informal resolution, and are protected from discrimination, coercion, restraint, or reprisal in initiating either an informal or formal action.

The steps of formal grievance processing are as follows:

A. *Step 1* - Within ~~15~~10 days of the grievable incident, or the employee's initial knowledge of the grievable incident, the employee may initiate a grievance by submitting a written grievance to the immediate supervisor. The grievance should contain a complete statement of the action or situation being grieved, the university policy that is being violated and the remedy being sought. The supervisor must provide the employee a written decision within five (5) ~~working~~ days of receipt of the grievance.

B. *Step 2* - If the employee is not satisfied with the Step 1 response, the employee may, within five (5) ~~working~~ days of ~~the~~ receipt of the response, submit the grievance to the next level of supervision. The supervisor at this level shall, within five (5) ~~working~~ days of receipt of the grievance, submit a written decision to the employee and the immediate supervisor. This shall be repeated for each additional level of supervision until the appropriate Vice President has been provided an opportunity to resolve the grievance. If the Grievant reports directly to the President or the Chief Human Resource Officer [CHRO], the President or CHRO may elect to refer the grievance to ~~the the MSU-Bozeman~~ Personnel Board before rendering a decision.

C. *Step 3* - If the employee is not satisfied with the Step 2 response, the employee may request a hearing review by the MSU-Bozeman Personnel Board. To initiate this review, the by submission of the -grievance ~~should be submitted to the Vice President for Administration and Finance Chief Human Resources Officer~~ within five (5) days of the receipt of the last Step 2 response. ~~The MSU-Bozeman Personnel Board has 15 days to initiate hearing proceedings~~ If the CHRO has a conflict of interest because the person works for Human Resources or for other reasons, all actions designated to be conducted by the CHRO will be conducted by the Vice President for Administration and Finance or designee.

~~For employees on a Board of Regents contract or MUS contract, discharge is considered to be termination before the end of the current contract year. In cases of non-renewal, the University has the right to elect not to renew the contract of any professional or administrative employee. In hearing a grievance involving contract non-renewal, the Personnel Board will only concern itself with items #1 and #2 above. (Reference Section 750.00 of this manual, "Non-Renewal.")~~

~~Grievants may choose to have an advisor or attorney with them during the Personnel Board hearing; however, the advisor or attorney may not participate in the proceedings of the hearing, but may only be present to advise the client.~~

~~Because of the potential personal privacy interests involved in the subject matter of many grievances, grievance hearings will be closed unless the grievant and any other participants in the hearing waive their right to individual privacy. Only MSU-Bozeman Personnel Board members, the grievant, management, advisor/attorney, and any witnesses called by the Board or either party will be allowed to attend proceedings of the hearing. Deliberations of the Board will be in a closed session, and will be confidential proceedings.~~

~~The Board will submit its written findings and recommendations to the President, with a copy to the Vice President for Administration, within 10 working days of completion of its hearing.~~

~~The President, or designated representative, will submit a written decision to the employee within 5 working days of receipt of the MSU-Bozeman Personnel Board's findings and recommendation.~~

~~D. *Step 4* - The employee may appeal the ~~President~~CHRO's decision to the Office of the Commissioner of Higher Education under the procedures set forth in Section 203.05.2, "Appeals," Board of Regents Policy and Procedures Manual [inset link]. This appeal must be made within five (5) ~~working~~ days of receipt of the ~~President's-~~ CHRO's decision. ~~The Commissioner will decide whether to hear the grievance.~~~~

~~E. *Step 5* - **The grievant may appeal the grievance to the Board of Regents within 5 working days of receipt of the Commissioner's decision. The Board of Regents will decide whether to hear the grievance. The Board of Regents' decision is final.**~~

804.00 GRIEVANCE PROCEDURES

~~A. A formal grievance hearing shall be conducted by a specially constituted "Personnel Grievance Board" (Board), which shall be appointed by the CHRO. The Board shall be comprised of one classified employee recommended by the Staff Senate, one contract professional employee recommended by the Professional Council, and one dean appointed by the CHRO. The CHRO will appoint a non-voting Hearing Officer to assist the Board. If a recommendation for an appointee is not received within five (5) days of the request, or otherwise cannot serve, the CHRO may appoint another employee in the same employee category to serve.~~

~~B. The Board's review will focus on:~~

~~1. Whether there has been a violation of the employee's rights under applicable university and Board of Regents policies.~~

~~-was compliance with all relevant laws, rules and regulations.~~

~~2. Whether there is convincing evidence that the decision was not irrational, arbitrary or capricious.~~

~~3. Whether, in cases of discharge suspension or termination for cause, there existed a legitimate business reason for the suspension or discharge/termination.~~

805.00 Pre-Hearing Conference

A. The Hearing Officer will schedule a pre-hearing conference to be conducted within ten (10) days of receipt of the Statement of Grievance. The appropriate supervisor(s) making the decision that is the basis for the grievance will participate in the Pre-Hearing Conference and the hearing.

B. The purposes of the pre-hearing conference are to:

1. Narrow and define the issue(s) to be considered at the hearing.
2. Identify and list any/all witnesses for the hearing. No witnesses may be called at the grievance hearing who have not been identified by the time specified by the Hearing Officer at the pre-hearing conference. Limitations on the number of witnesses for the hearing may be established for the parties by the Hearing Officer during the pre-hearing conference.
3. Identify and list any/all documents to be submitted at the hearing. No documents may be submitted at the grievance hearing which were not identified at and exchanged by the time specified at the pre-hearing conference.
4. Provide a time for a pre-hearing exchange (between all parties) of any documents or other information to be submitted at the hearing.
5. Set a time and place for the formal hearing. The hearing shall be held within ten (10) days of the pre-hearing conference, unless good cause for a delay is shown by any party.

The grievant may have the assistance of an advisor or attorney at the pre-hearing conference. However, the parties are responsible for representing themselves and, therefore, advisors or attorneys are not permitted to participate directly in the pre-hearing conference.

806.00 The Grievance Hearing

A. Because of the potential personal privacy interests involved in the subject matter of many grievances, grievance hearings will be closed to the public unless the grievant and any other participants in the hearing waive their rights to individual privacy. Only the Personnel Board members, the grievant, appropriate university officials, advisors/attorneys, and any witnesses called by the Board or either party will be allowed to attend proceedings of the hearing. Deliberations of the Board will be in a closed session, and will be confidential proceedings. The

grievance hearing is not a judicial process; therefore the proceedings shall not be governed by the formal rules of evidence or the rules of civil procedure used in civil court cases.

B. The grievance hearing will be conducted according to the following procedures:

1. The Hearing Officer shall preside at the grievance hearing and will make all decisions regarding evidentiary and procedural questions.

2. The grievant may have the assistance of an advisor or attorney during the hearing. The grieving parties are responsible for representing themselves and, therefore, advisors and attorneys are not permitted to participate directly in the hearing.

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3. Each party shall be given a reasonable opportunity to present his or her case, including presenting testimony of witnesses and documentary evidence. However, the Hearing Officer may preclude the presentation of duplicative, irrelevant or unnecessary evidence.

4. Each party shall have the opportunity to question the other party's witnesses.

5. The Montana Rules of Evidence and the Rules of Civil Procedure do not apply. Every reasonable effort will be made to elicit and consider the most reliable evidence. Sworn statements may be admitted in lieu of testimony only if the witness is not available and the statement is necessary to a resolution of the matter. The decision of the Hearing Officer on questions of admissibility of evidence or procedural matters shall be final.

Personnel Board Hearing Procedures

810.60 History

Reviewed by the MSU Personnel Board on February 27, 1986, and approved by the Director of Administration on March 10, 1986. Revision approved by the Vice President for Administration on May 2, 1991. This modification approved by the Vice President for Administration & Finance on November 29, 2001. This modification approved by MSU Legal Counsel on January 22, 2010.

820.00 Discrimination Complaints

Modified November 2001

820.10 References

- Title VI and VII of the Civil Rights Act
- Title IX of the Education Amendments
- Section 504 of the Rehabilitation Act

- ~~Executive Order 11246, the Vietnam Veteran's Readjustment Act~~
- ~~Montana Code of Fair Practice~~
- ~~Montana State Human Rights Act~~

820.20 Policy

~~Montana State University Bozeman does not discriminate in its employment policies on the basis of race, religion, sex, sexual preference, age, national origin, color, marital and parental status, creed, political belief, physical or mental handicap, disability, or status as veteran.~~

~~Montana State University Bozeman maintains a Sexual Harassment Policy which prohibits the sexual harassment of employees by co-workers or supervisors.~~

~~Montana State University Bozeman shall afford any employee the right to file a complaint on the grounds of discrimination or sexual harassment. The Office of Institutional Equity (OIE) should be contacted for specific procedures, or when a violation of this policy appears to have occurred.~~

820.30 History

~~Reviewed by the MSU Personnel Board on February 27, 1986, and approved by the Director of Administration on March 10, 1986. Update approved by the Vice President for Administration on September 17, 1992. This modification approved by the Vice President for Administration & Finance on November 29, 2001~~