

Grievance Procedures

Policy: **GRIEVANCE PROCEDURES**

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Responsible Party: **Office of the Provost**

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1. DEFINITIONS

“CHRO”: the Montana State University Chief Human Resources Officer.

“Days”: as used herein means calendar days unless otherwise specified.

“Grievance Hearing Board”: the faculty committee convened for the purpose of affording faculty members the opportunity to present their grievable disputes to a duly constituted committee of their colleagues.

“Grievance Hearing Board Chair” or “Chair”: the faculty member selected by the Faculty Senate Chair to act as the Chair of the Grievance Hearing Board for faculty grievances.

“Grievance Hearing Committee”: the Chair and the Grievance Hearing Board convened for a grievable dispute.

“Grievant”: the individual who files a grievance under this policy.

“Respondent(s)”: the individual or individuals against whom a grievance is brought, and whom the grievant alleges took some action or made a decision that is a grievable under Section III.

“Grievance”: (a) a dispute alleging the violation or misapplication of established rules, regulations, policies or

procedures of Montana State University, the Montana University System, or the Board of Regents that pertain to tenured and tenurable faculty, or (b) an allegation of violation or misapplication of policy, procedure, standard, or criterion that resulted in a negative substantive retention, tenure, or promotion review. The types of grievances that are covered by this policy are listed in Section III.

“Statement of Grievance”: the statement provided by a grievant to initiate the grievance process that contains the detailed statement of the incident(s) which the grievant believes gives rise to the grievance.

2. CONFIDENTIALITY_

Confidentiality will be maintained by all parties to the grievance process. No public announcements should be made by any party unless there has been a waiver of the privacy rights of all parties involved.

3. APPLICABILITY_

Grievance procedures apply to tenured and tenurable faculty only. The grievance rights of nontenured faculty who are members of the AFMSU collective bargaining unit are governed by the [collective bargaining agreement](#). The grievance rights of other nontenured faculty appointments are provided in the [Personnel Policy and Procedures Manual](#).

Grievance procedures apply to faculty members on tenured and tenurable appointments who also have administrative assignments. Grievance procedures apply to the resolution of disputes concerning such an individual’s faculty appointment, and not any administrative assignments. Resolution of disputes regarding faculty administrative assignments should be addressed through the process described in the [Personnel Policy and Procedures Manual](#).

a. TYPES OF DISPUTES INCLUDED

These grievance procedures apply to the following:

1. Disputes arising from alleged violation or misapplication of established rules, regulations, policies, or procedures of Montana State University, the Montana University System, or the Board of Regents that pertain directly to tenured and tenurable faculty;
2. Disputes alleging that a violation or a misapplication of policy, procedure, standard, or criterion that resulted in a negative substantive retention, tenure, promotion, or post-tenure review.

b. TYPES OF DISPUTES EXCLUDED

These grievance procedures do not apply to the following:

1. Disputes involving allegations of violation of the university [Research Misconduct Policy](#). Cases arising under the [Research Misconduct Policy](#) are governed by the hearing procedure set forth in that section.
2. Disputes alleging complaints covered by the [Discrimination, Harassment, Sexual Misconduct, Dating Violence, Domestic Violence, Stalking and Retaliation Policy](#) of the university. Allegations of conduct covered by the Discrimination, Harassment, Sexual Misconduct, Dating Violence, Domestic Violence, Stalking and Retaliation Policy are exclusively handled pursuant to the procedure set forth in that policy.
3. Disputes about academic assignments, annual evaluations, annual reviews, and performance ratings. These are governed by https://www.montana.edu/policy/faculty_handbook/annual_review.html.
4. Termination for cause proceedings. Termination for cause proceedings will be governed by the procedures set forth in [Policy 710.2.2](#) of the Board of Regents Policy and Procedures Manual.
5. Disputes about the imposition of any disciplinary sanction, including the severity of any such sanction, unless the dispute pertains to whether the imposition of such a sanction constitutes a violation or misapplication of established policies or procedures of Montana State University, the Montana University System, or the Board of Regents.
6. Any other disputes concerning allegations of a violation of a policy that has its own hearing or appeal

procedures contained in the policy.

4. SCOPE OF GRIEVANCE AND DEADLINE FOR FILING

Grievances involving retention, tenure, or promotion cannot be grieved until the provost has communicated their recommendation to the faculty member pursuant to the procedures and timelines set forth in the Retention, Tenure, and Promotion policy. If the recommendation of the provost is favorable for the faculty member, the faculty member is ineligible to grieve reviews that occurred prior to the recommendation of the provost. If the recommendation of the provost is unfavorable, the faculty member may include a prior review in the grievance.

The faculty member has fourteen (14) days from the date of notification by the provost to file notice of the intent to grieve with the CHRO. The faculty member will then have an additional twenty (20) days to file the Statement of Grievance.

All other grievances must be filed within thirty (30) days of the incident giving rise to the dispute.

The deadlines referred to in this policy may be extended, for good cause, by the Chair of the Grievance Hearing Board or designee, upon written notice to all parties.

5. GRIEVANCE HEARING COMMITTEE

a. Grievance Hearing Committee Members

The Grievance Hearing Committee shall be comprised of the following members:

- Grievance Hearing Board Chair
- Three Grievance Hearing Board members (as detailed in section V.C below)
- External Hearing Officer (where appointed pursuant to section V.D below)

b. Grievance Hearing Board Chair

The Grievance Hearing Board Chair will be appointed to a three (3) year term by the Chair of Faculty Senate from among the tenured faculty.

The Chair or designee will preside at the pre-hearing conference and hearing and will make all decisions regarding evidentiary and procedural questions. The Chair will not vote nor render a decision on the merits of the grievance.

Administrative support for the Chair will be provided by a representative of Human Resources appointed by the CHRO.

c. Grievance Hearing Board

A Grievance Hearing Board will be appointed to a one (1) year term. The one (1) year term may be extended where necessary to allow the Grievance Hearing Board to complete their review of any grievances accepted by the Chair prior to the conclusion of their term.

The Grievance Hearing Board will be comprised of tenured faculty appointed as follows:

- Two tenured faculty members appointed by the Chair of Faculty Senate;
- One tenured faculty member appointed by the Provost.

Where reasonably possible and practicable, the Grievance Hearing Board shall be comprised of diverse members (e.g., gender, race, national origin, disability, academic department, etc.). The Provost and Chair of Faculty Senate shall consult prior to appointing faculty members to the Grievance Hearing Board.

The Grievance Hearing Board is responsible for rendering its judgment on the merits of the grievance outlined

in Section 11.c. The scope of the Grievance Hearing Board's role is limited to a determination of whether rules, regulations, policies, or procedures have been violated or misapplied.

The Grievance Hearing Board cannot reverse the underlying decision but may recommend to the president that the process be corrected and reinitiated from the point of the identified infraction. The Grievance Hearing Board can, after a negative decision in this area, hear the case and make a ruling as to whether or not the decision was based on a correct application of the applicable criteria and standards. In issuing its decision, the Grievance Hearing Board shall not provide its judgment on the ultimate outcome (e.g., whether, in their opinion, retention, promotion or tenure should have been granted) of any promotion, tenure, or retention decision.

a. CHALLENGE TO THE GRIEVANCE HEARING BOARD MEMBERSHIP FOR CAUSE

Either the grievant or respondent(s) may challenge the appointment of specific members to the Grievance Hearing Board for cause by submitting a written statement of cause prior to the pre-hearing conference to the Chair of Faculty Senate for members appointed by the Chair or to the Provost for members appointed by the Provost. If the showing of cause is sufficient to suggest the member has a conflict of interest that may affect their ability to participate objectively, the person appointing the member shall replace the challenged member. The decision of the Chair of Faculty Senate or Provost, regarding the membership of the Committee is final. Any replacement members of the Committee are again subject to challenge by either grievant or respondent(s).

d. EXTERNAL HEARING OFFICER

In exceptionally complicated cases, the Chair may request the CHRO to provide recommendations of persons who could serve as an External Hearing Officer (EHO) to assist with the case. The Chair will make the final decision regarding the use of an EHO and may delegate responsibilities for pre-hearing conference and other procedural duties to the EHO. The External Hearing Officer will be a non-voting member of the Board.

6. GRIEVANCE PROCEDURES

a. Initiating a Grievance Proceeding

The grievant initiates the grievance process by filing a written Statement of Grievance with the CHRO, who will forward it to the Grievance Hearing Board Chair for review. The statement will contain the following information:

- The date(s) of the grievable incident(s);
- The name(s) of the respondent(s);
- A complete statement describing the grievable incident including all facts and circumstances upon which the grievance is based and the role of each respondent as it pertains to the grievance;
- The specific rule(s), regulation(s), criterion(a), standard(s), policy(ies), or procedure(s), including the specific section numbers of these policies, that are alleged to have been violated;
- The signature of the grievant attesting that the information provided is true and correct to the best of their knowledge.

After a grievance procedure has been initiated, no participant in the process may discuss the merits of the case with any decision maker in the process, including the President. Upon acceptance of a grievance, all communications between the Grievance Hearing Board Chair and the grievant or respondent shall be provided to all parties.

The grievant and respondent must fully participate in the grievance process. Failure of the grievant to participate in the grievance process may result in dismissal of the grievance by the Chair. If the respondent(s) fail to cooperate with the process or to fully participate, the Grievance Hearing Board may hear the case and reach a decision based on the available evidence.

b. Acceptance or Rejection of a Grievance

The Grievance Hearing Board Chair will review the Statement of Grievance to determine whether or not the described incident(s) is within the purview of the grievance process (see Sections 3.a and 3.b) and accept or reject the request for a grievance hearing. The grievant will be notified in writing of the decision. The written decision shall include the basis for the decision, any appeal rights, and a copy of this policy.

If the grievance is rejected, the grievance process is terminated. The faculty member may appeal the decision to the CHRO, who will review the appeal in consultation with the Chair of Faculty Senate and the provost. The CHRO's determination on appeal will be final.

If the grievance is accepted, the Grievance Hearing Board Chair or designee will forward the Statement of Grievance to the respondent(s).

c. Respondent's Reply to Statement of Grievance

Individuals named as respondents will have seven (7) days from receipt of the Statement of Grievance to submit a written response to the Grievance Hearing Board Chair. This response should be limited to a response to the allegations contained in the Statement of Grievance and any other relevant facts or circumstances. A copy of the Response shall be provided to the grievant.

d. Pre-Hearing Conference

The Grievance Hearing Board Chair or designee will schedule a pre-hearing conference to be conducted within twenty-one (21) days of receipt of the Statement of Grievance. The Chair shall attempt to work with the grievant and respondent to schedule a date and time for the pre-hearing conference within the time specified. The Chair has the discretion to extend the deadline to conduct the pre-hearing conference by up to an additional fourteen (14) days when necessary (e.g., to ensure the participation of the parties, or allow for the full review and consideration of the evidence presented). These proceedings may be discontinued at any point by withdrawal of the grievance by the grievant or mutual written consent of both the grievant and the respondent(s).

The grievant and respondent(s) may have the assistance of an advisor at the pre-hearing conference. However, the parties are responsible for representing themselves and, therefore, advisors are not permitted to participate directly (i.e., address the Chair or other parties) in the pre-hearing conference. The grievant will provide notification if they will use an attorney as an advisor five (5) days prior to the pre-hearing conference. Upon receipt of notice of an attorney advisor, MSU representatives may have legal counsel present.

The purpose of the pre-hearing conference is to:

1. Narrow and define the issue(s) to be considered at the hearing.
2. Identify and list any/all witnesses for the hearing. The Chair may choose to call a witness at the hearing that was not identified by the parties. No witnesses may be called at the hearing who have not been identified at the pre-hearing conference. Limitations on the number of witnesses for the hearing may be established for the parties by the Chair during the pre-hearing conference. The Chair shall notify all witnesses of the hearing date and their expected participation.
3. Identify and list any/all documents to be submitted at the hearing. The Chair may request that documents be presented for consideration at the hearing that were not identified by the parties. No documents may be submitted at the hearing that were not identified and exchanged at the pre-hearing conference.
4. Provide for an exchange (between all parties) of any documents or other information to be submitted at the hearing. The Parties shall provide copies of any documents or other information to be submitted at the hearing to the Chair by 5:00 pm at least seven (7) days prior to the pre-hearing conference. The Chair shall provide the documents and information to all parties at least three (3) days in advance of the pre-hearing conference. Upon a showing of good cause, the Chair shall have the discretion to allow the introduction of documents at the hearing that were identified during the pre-hearing conference,

rather than seven (7) days in advance as required. In such cases, the other party shall have three (3) days to request that the Chair allow the introduction of any documents submitted in rebuttal to the newly identified documents.

5. Provide the parties an opportunity to raise any objections or concerns they have regarding witnesses or documents identified during the pre-hearing conference that are requested to be allowed at the hearing.
6. Set a time and place for the hearing.

The Chair or designee will preside at the pre-hearing conference and will make all decisions regarding evidentiary and procedural questions. No later than five (5) days after the pre-hearing conference, the Chair or designee shall provide the parties with a written list of the witnesses and evidence that have been approved to be presented at the hearing. Any witnesses or evidence not contained on the list shall not be permitted to be presented at the hearing.

7. THE GRIEVANCE HEARING

The grievance hearing is not a judicial process; it is an internal administrative review process. Therefore, the proceedings will not be governed by the rules of evidence or the rules of civil procedure used in civil court cases.

The grievance hearing shall take place within twenty-one (21) days of the pre-hearing conference. The Chair has the discretion to extend the deadline to conduct the hearing by up to an additional fourteen (14) days when necessary (e.g., to ensure the participation of the parties, or allow for the full review and consideration of the evidence presented).

A. Conduct of the Grievance Hearing

The hearing will be conducted according to the following procedures:

1. The grievant and respondent(s) may have the assistance of an advisor at the hearing. The grieving parties are responsible for representing themselves and, therefore, advisors are not permitted to participate directly (i.e., address the Chair, Board, or other parties) in the hearing. The grievant will provide notification if they will use an attorney advisor at least five (5) days before the hearing. Upon receipt of notice of an attorney advisor, university representatives may have legal counsel present.
2. Because this grievance process relates to human resource issues, grievance hearings will be closed to the public unless the grievant and all other participants in the hearing waive their rights to individual privacy as outlined under the [Open Meeting Policy \(https://www.montana.edu/policy/open_meetings/\)](https://www.montana.edu/policy/open_meetings/). Unless the Chair determines the meeting is an open meeting, only Grievance Hearing Committee members, the grievant, appropriate university officials, advisors/attorneys, and any witnesses called by the Grievance Hearing Committee or either party, will be allowed to attend proceedings of the hearing.
3. Each party will have the opportunity to make opening statements.
4. The grievant will present their case first.
5. All parties will be given a reasonable opportunity to present their cases, including presenting testimony of witnesses and documentary evidence. However, the Chair (or designee) may preclude the presentation of duplicative, irrelevant, or unnecessary evidence. (The Chair may have established limitations on the numbers of witnesses for the parties at the pre-hearing conference.)
6. Each party will have the opportunity to cross-examine the other party's witnesses. The Chair has the authority to stop a line of questioning, or to permit a witness or party to not answer when the question is not relevant to the grievance.
7. The Grievance Hearing Committee may ask questions of parties and witnesses during the hearing.
8. Every reasonable effort will be made to elicit and consider reliable and relevant evidence. In extraordinary cases, the Chair may permit sworn statements in lieu of testimony. The decision of the Chair or designee on questions of admissibility of evidence will be final.
9. The parties may make closing arguments.

10. The Chair or designee will arrange for an audio recording of the proceedings to be made. That recording and all other evidence will be retained for the record by the CHRO or designee pending the Report of the Grievance Hearing Board.
11. The grievant or the university may request that a stenographic record of the hearing or transcript of the audio recording be made, providing the requesting party pays the associated costs.

B. Record of the Grievance Hearing

The record of the grievance hearing will consist of the audio recording of the hearing, all evidence or exhibits presented at the hearing, all communications to or from the Chair in reference to the hearing, and any other graphic, written, or recorded information relevant to the Grievance Hearing and its procedures.

C. Decision of the Grievance Hearing Board

The Grievance Hearing Board will determine:

1. whether a misapplication of established rules, regulations, policies or procedures of Montana State University, the Montana University System, or the Board of Regents has occurred, or
2. whether any misapplication of policy, procedure, standard, or criterion resulted in a negative substantive retention, tenure, or promotion review, and
3. whether the misapplication or violation adversely affected the grievant's ability to receive fair consideration of their formal review or, in other cases, whether the misapplication or violation adversely affected the grievant related to some aspect of their employment.

D. Report of the Grievance Hearing Board

The Report of the Grievance Hearing Board will include the findings of fact on each issue presented and make recommendations regarding appropriate action(s) to be taken. The Report will be sent to the CHRO within fourteen (14) days of the hearing. The CHRO or designee will forward the Report and the record of the hearing to the president within five (5) days of the receipt of the report and will send copies of the report to all parties.

8. RESPONSIBILITIES OF THE PRESIDENT_

Upon receipt of the Report of the Grievance Hearing Board, the president will have fourteen (14) days to issue the decision of the university. The president will inform the Chair of the Grievance Hearing Board, the grievant, and the university administrators involved in the grievance hearing procedure of the decision.

9. GRIEVANT'S RIGHT TO APPEAL_

The president's decision may be appealed to the Commissioner of Higher Education and to the Board of Regents in accordance with its appeals policy. [BOR Policies and Procedures Manual, Section 203.5.2.](#)

10. DISPOSITION OF THE RECORD_

Following the president's decision, the paper and electronic records of the proceedings will be held in a secure location by the University Human Resources Department for a period of three (3) years. The Grievance Hearing Board assembled for the case will be dismissed and this action will terminate the grievance hearing process.