

# ***Coordinating Board for Higher Education*** **Policy on Dispute Resolution**

*Adopted December 6, 2007*

## **Section 1. General Description and Intent**

Senate Bill 389, which became law August 28, 2007, gives the Commissioner of Higher Education authority to mediate disputes that arise between institutions concerning the use of state resources and jurisdictional boundaries. This policy sets forth the process by which such dispute resolution will be conducted.

## **Section 2. Statutory Language**

173.125. As a condition of receiving state funds, every public institution of higher education shall agree to submit to binding dispute resolution with regard to disputes among public institutions of higher education that involve jurisdictional boundaries or the use or expenditure of any state resources whatsoever, as determined by the coordinating board. In all cases, the arbitrator shall be the commissioner of higher education or his or her designee, whose decision shall be binding on all parties. Any institution aggrieved by a decision of the commissioner may appeal such decision, in which instance the case shall be reviewed by the full coordinating board, at which time the full coordinating board shall have the authority to make a final and binding decision, by means of a majority vote, regarding the matter.

## **Section 3. Definitions and Acronyms**

- A. CBHE: The Coordinating Board for Higher Education.
- B. Commissioner: The Commissioner of Higher Education or his/her designee.
- C. Dispute: A disagreement between two or more institutions that involves jurisdictional boundaries or the use or expenditure of any state resources whatsoever.
- D. Institution: An approved public institution of higher education, as defined in § 173.1102, RSMo, provided it is also either accredited or a candidate for accreditation by the Higher Learning Commission of the North Central Association of Colleges and Secondary Schools, and provided it offers a postsecondary course of instruction at least two years in length leading to conferral of a degree.
- E. MDHE: The Missouri Department of Higher Education.
- F. Parties: The institutions involved in a dispute.

## **Section 4. Process**

1) By accepting a state appropriation a public institution of higher education agrees that during the fiscal year in which it receives the funds it will submit to binding dispute resolution with regard to disputes.

2) Dispute resolution may be appropriate in circumstances including but not limited to situations within the purview of the CBHE where tensions in an area reach a critical mass, resulting in potentially detrimental effects on the delivery of academic programs; where there is evidence of excessive duplication of services when multiple off-campus/out-of-district higher education sites exist within the same community; or where institutions engage in excessive competition with each other, resulting in less than efficient use of state funds. The dispute resolution process will be initiated only after all reasonable informal attempts to resolve the dispute have failed. An institution that participates in this process shall not be deemed to have waived any legal challenges it might have to the authority or jurisdiction of the CBHE or the Commissioner of Higher Education over the subject matter in dispute.

3) The dispute resolution process may be initiated by an institution, the Commissioner, or the CBHE. If any such person or entity believes that a dispute exists, they may make a written request of the Commissioner to be put on the agenda of the CBHE's next regularly scheduled meeting. The Commissioner will notify all potential parties to the dispute of the time, date, and place of the CHBE meeting. At the meeting, the person or entity seeking to initiate the dispute resolution process will have an opportunity to describe the dispute and the reasons they believe dispute resolution is warranted. The affected institution(s) will have an opportunity during the meeting to respond and to describe all efforts they have made to resolve the dispute. The Commissioner or CBHE may set time limits on oral presentations at the CBHE meeting if he/she feels it is fair and necessary to do so. The CBHE shall, by majority vote, determine whether to refer the dispute to the Commissioner for dispute resolution.

4) If the CBHE votes to refer a dispute to the Commissioner, the Commissioner shall determine whether he/she will preside over the dispute resolution process, or if he/she will designate another individual to do so. He/she may appoint a designee if (a) he/she believes there is a real or perceived conflict of interest that may undermine the process or (b) he/she believes that the complexity, timing, or other aspect of the dispute creates a situation in which the Commissioner will have difficulty presiding over the process. The Commissioner may designate an MDHE staff member to serve as his/her designee. The institutions that are parties to the dispute may also elect to hire an external consultant to preside over the dispute resolution process, provided that such consultant is acceptable to all parties and to the Commissioner. If the parties elect to designate an external consultant, the costs associated with the dispute resolution process shall be shared equally by the institutions that are parties to the dispute. The designee shall have the same authority as the Commissioner in the dispute resolution process. The Commissioner shall identify the person who will preside over the dispute resolution process as soon as possible.

5) Within one week after the CBHE votes to refer a dispute to the Commissioner, the Commissioner shall notify all parties of the commencement of the dispute resolution process. Such notice shall describe the nature of the dispute(s) to be addressed and require the parties to set forth their positions in writing within thirty days after the day the notice is sent. The Commissioner may request additional information at this or any other time in the dispute resolution process.

6) After the Commissioner has received all of the preliminary information he/she deems necessary, the Commissioner shall schedule a meeting at a time and place agreeable to all parties. The Commissioner shall inform the parties of the format for the meeting, including any time limits on oral presentations he/she deems fair and necessary.

7) At the meeting, each party shall have an opportunity to be heard and to ask questions of the other party or parties. The meeting shall be recorded, and the recording shall constitute the record. The Commissioner shall work with the parties to identify solutions that are mutually acceptable to all involved.

8) The Commissioner shall base his or her decision on the written and verbal representations made by the parties during the dispute resolution process and may consider other factors, including but not limited to the reasonableness of each party's response to solutions proposed during the meeting.

9) The Commissioner shall issue a written decision within thirty days after the meeting. The decision shall set forth the Commissioner's conclusions, the factual basis upon which the conclusions are based, and any actions required of the parties.

10) An institution aggrieved by the Commissioner's decision may make a written appeal to the CBHE to reconsider the Commissioner's decision within thirty days after the day the Commissioner gives the parties notice of his/her decision. The appeal shall set forth the reason(s) the institution is aggrieved and the reason(s) the institution believes the Commissioner decided wrongly. The CBHE shall provide all parties with copies of the written appeal.

11) The other parties to the dispute and the Commissioner may respond in writing to the aggrieved party's appeal within thirty days after the date the CBHE provides copies of the appeal.

12) The CBHE shall consider the record of the proceedings leading up to the appeal at its next regularly scheduled meeting. At such meeting, the CBHE may inquire of any party to the dispute and of the Commissioner and make a determination based on the record.

13) After the CBHE has received all information it deems necessary, the CBHE shall make a final and binding decision including a finding of fact and conclusions about the appeal by means of a majority vote of all currently appointed CBHE members, whether such members are present at the meeting by electronic means or in person; provided, however, that no vote will be made on the appeal unless a quorum is established. The CBHE may accept, reject, or modify all or part of the Commissioner's decision and may ask the Commissioner to resume dispute resolution to address any or all issue(s).

## **Section 5. General Requirements**

1) Neither the dispute resolution process nor the appeal is a legal proceeding. Parties to a dispute may, however, be represented by attorneys during any and all stages of the dispute resolution process or the appeal. The Commissioner may ask questions directly of an institutional representative at any time; the institutional representative shall respond to such questions.

2) All parties participating in the dispute resolution process or an appeal must provide all information requested in a timely manner.

3) All parties will receive copies of all documents provided to or by the Commissioner or the CBHE in connection with the dispute resolution process or an appeal.

4) All written documentation submitted as part of the dispute resolution process or an appeal shall be considered public information and will be made available to any person or entity

that requests it. “Written documentation” includes but is not necessarily limited to all correspondence, tables, charts, and data files.