

SECTION I

PART K POLICIES AND PROCEDURES FOR RESOLUTION OF DISPUTES AMONG PUBLIC INSTITUTIONS OF HIGHER EDUCATION

1.00 Introduction

This policy outlines the principles of, and a process for, Commission involvement in the resolution of disputes between and among public institutions of higher education in Colorado. The policy addresses disputes among institutions in two different circumstances: 1) when both or all of the institutions involved in the dispute are part of the Auraria Higher Education Center (AHEC, or the Auraria Center); and 2) when the institutions involved in the dispute are not all part of AHEC and two or more of the institutions involved in the dispute fall under the jurisdiction of different governing boards. The Commission is statutorily charged in §23-70-106.5, C.R.S., with certain responsibilities in the resolution of disputes between institutions at the Auraria Center, and between institutions at the Auraria Center and the Auraria board. The approach outlined in this policy for resolution of disputes on the Auraria Center guides the Commission's approach to resolution of disputes among institutions outside of that specific context.

The policy is divided into the following sections:

- 1.00 Introduction
- 2.00 Statutory Authority
- 3.00 Definitions
- 4.00 Policy Goals
- 5.00 Principles and Procedures for Dispute Resolution at the Auraria Center
- 6.00 Principles and Procedures for Dispute Resolution Outside of the Auraria Context

2.00 Statutory Authority

Statutory authority regarding resolution of disputes at the Auraria Higher Education Center is outlined in §23-70-106.5, C.R.S. Statutory authority for resolution of disputes among public institutions more broadly is derived from the legislative declaration establishing the Colorado Commission on Higher Education in §23-1-101 and §23-1-102(2), C.R.S.

- 2.01 §23-1-101, C.R.S. "The purposes of this article are to maximize opportunities for postsecondary education in Colorado; to avoid duplication of facilities and programs...to achieve simplicity of state administrative procedures...to effect the best utilization of resources...to accommodate state priorities and the needs of individual students...and to continue to recognize the

constitutional and statutory responsibilities of duly constituted governing boards of state-supported institutions in Colorado. In this article, express powers and duties are delegated to a central policy and coordinating board, the Colorado commission on higher education, and the department of higher education is responsible for implementing the duly adopted policies of the Colorado commission on higher education...”

2.02 §23-1-102(2), C.R.S. “There is hereby established a central policy and coordinating board for higher education in the state of Colorado, to be known as the Colorado commission on higher education...The duties and powers delegated to the commission by this article apply to all state-supported institutions of higher education...The governing boards and institutions of the public system of higher education in Colorado, including the university of Colorado, are obligated to conform to the policies set by the commission within the authorities delegated to it in this article.”

2.03 §23-70-106.5. **Resolution of disputes at Auraria center.** (1) After notification to the affected chief executive officers, which notification provides for a deadline of not more than ten days for the resolution of a dispute, the chief executive officer of any governing board at the Auraria center, including the Auraria board, may request the Colorado Commission on Higher Education to resolve a conflict concerning an academically related issue at the Auraria center. The Commission shall have the authority to make the final decision to resolve the issue presented to it or may delegate its responsibility and authority for the final decision of the issue to the Auraria board. The decision of either the Commission or the Auraria board shall be binding on all of the governing boards and institutions and on the Auraria board. It is the policy of the general assembly that the Commission is encouraged to delegate to the Auraria board, to as great an extent as possible, its authority for making final decisions at the Auraria center.

(2) The chief executive officer of any governing board at the Auraria center, including the Auraria board, may request the Auraria board to resolve a conflict concerning the operation, administration, or use of the physical facilities at the Auraria center. The Auraria board shall have the authority to make the final decision to resolve the issue presented to it, and such decision shall be binding on all of the governing boards and institutions and on the Auraria board.

(3) All issues involving interinstitutional disputes at the Auraria center shall be considered as either academically related or operationally related, and the Commission is authorized to determine whether it or the Auraria board shall have jurisdiction in regard to the resolution of the dispute.

2.04 There are certain sections within the Auraria statute that also apply to the question of dispute resolutions. These follow.

2.04.01 §23-70-101(1). **Legislative declaration.**

...

(c) Facilitate the execution and performance of the constitutional and statutory responsibilities of the governing boards of the constituent institutions.

...

(e) Provide a system for facilitating cooperation among the constituent institutions, their governing boards, and the governing board created by this article.

...

2.04.02 §23-70-104(1). **Duties of the Auraria board.**

...

(d) To determine and designate the nonacademic and nonvocational joint programs or joint activities of the constituent institutions to include but not be limited to security and fire protection, maintenance, and purchasing

(e) To continually develop, review, and update annually a long-range plan for operation of the center. There shall be a five-year forecast of the operational costs and capital construction costs, which shall be submitted to the General Assembly no later than January 1 of each year, commencing January 1, 1975.

(f) To decide interinstitutional disputes presented to the Auraria board by any one or more of the constituent institutions pursuant to section 23-70-106.5; and

(g) To investigate supplementary or alternative methods for the delivery of selected higher education services through the use of existing campuses and facilities in Denver and the metropolitan area.

3.00 Definitions

3.01 “Commission” means the Colorado Commission on Higher Education created pursuant to section Title 23, Article 1, of the Colorado Revised Statutes.

3.02 The “Auraria Higher Education Center”, or “AHEC”, or the “Auraria Center” is the “multiinstitutional higher education complex located in the city and county of Denver on land designated therefor” to “accommodate and house Metropolitan state university of Denver, the university of Colorado at Denver, and the community college of Denver, Auraria campus”, created pursuant to section Title 23, Article 70, of the Colorado Revised Statutes.

3.03 The “Auraria board”, or the “AHEC board”, is the board of directors of the Auraria higher education center, created pursuant to §23-70-102, C.R.S.

3.04 The “Auraria boards” are the collective boards of the four institutions that comprise the Auraria Center listed in 3.02, plus the AHEC Board.

- 3.05 The “Auraria Executives Council” is a group composed of the chief executive officers of each of the three institutions on the Auraria campus—the president of the Community College of Denver, the president of Metropolitan State University of Denver, and the chancellor of the University of Colorado Denver—plus the chief executive officer of the Auraria Higher Education Center.
- 3.06 Unless otherwise specified, the “Executive Director” is the chief executive officer of the Colorado Department of Higher Education.

4.00 Policy Goals

The policy goals are to minimize obstacles to effective inter-institutional cooperation in advancing the legislative objectives for higher education articulated in §23-1-101, C.R.S., and toward fulfilling any and all active systemwide postsecondary master planning goals, per §23-1-108, C.R.S.

5.00 Principles and Procedures for Dispute Resolution at the Auraria Center

5.01 Statutory Interpretations

There are a number of points of interpretation that are critical to the implementation of the statutory provisions regarding resolution of disputes on the Auraria Center:

- 5.01.01 Only the chief executive officer of the governing board concerned may request the Colorado Commission on Higher Education to resolve a dispute. These individuals are the President of the University of Colorado, the President of Metropolitan State University of Denver, the Chancellor of the Colorado Community College System, and the Chief Executive Officer of the Auraria Higher Education Center.
- 5.01.02 Before a request is made to the Colorado Commission on Higher Education to resolve a dispute, notification of the dispute must be provided in writing (including electronic correspondence) to all of the chief executive officers of the boards operating on the Auraria campus. After this notification is made, there is a ten day deadline for resolving the dispute among the parties involved. If within these ten days the dispute is resolved, the Commission is not notified and does not become involved.
- 5.01.03 The Auraria board is provided the authority to resolve academic issues if the Commission directs it to do so.

- 5.01.04 Without Commission involvement, the Auraria board has the authority to resolve conflicts on issues concerning the operation, administration, or use of the physical facilities at the Auraria Center.
- 5.01.05 The Commission has the authority to define disputes as academic or operational and to set policy guidelines for defining an academic vs. an operational issue.

5.02 Principles for Dispute Resolution at the Auraria Center

The principles the Commission will adhere to in resolving conflicts on the Auraria Center are listed below.

- 5.02.01 Issues should be resolved at the lowest possible level. The Commission will directly involve itself in the resolution of conflicts as infrequently as possible.
- 5.02.02 For issues that cannot be resolved among the four campus administrators or the chief executive officers of the boards, the Commission will request that the Auraria boards resolve those issues except for major policy questions.
- 5.02.03 Disputes related to joint academic programs, including curriculum, faculty appointments, teaching assignments, and organization of academic units, are to be resolved by the Auraria Executives Council, or by the Auraria board, to the extent possible.
- 5.02.04 Decisions directed by the Commission to the Auraria board or resolved directly by the Commission are not subject to appeal within Commission policies. Alternatives for appeal exist only within the General Assembly or the legal system.

5.03 Procedures for Dispute Resolution at the Auraria Center

Before an issue can be accepted for resolution by the Colorado Commission on Higher Education, the following steps must have been taken in order to resolve that issue locally.

- 5.03.01 The Auraria Executives Council must discuss the issue with all four institutions represented and have failed to reach a resolution.
- 5.03.02 The chief executive officers of each of the governing boards of the constituent institutions and AHEC must have been notified of the agreement on the resolutions of the issue. There are ten days from the point of initial notification in which to reach this resolution.

- 5.03.03 A letter must be sent by one of the chief executive officers of the Auraria boards to the Executive Director of the Commission stating the specifics of how each of the aforementioned steps have been taken and that resolution has still not been reached. This letter needs to identify the issue, describe it from the perspective of the chief executive officer submitting the letter, describe the appropriate resolution from the perspective of the chief executive office submitting the letter, and identify the amount of any fund transfers which would be required consistent with the proposed resolution. A copy of this letter to the Executive Director of the Commission must be sent to each of the four campus chief executive officers at the time it is sent to the Executive Director of the Commission.
- 5.03.04 If all four campus chief executive officers concur that the issue is an operational issue, the question can be sent directly to the Auraria board for resolution without Commission involvement.
- 5.03.05 Upon receipt of the letter from one of the chief executive officers indicating the unresolved issue, the Executive Director of the Commission under delegated authority from the Commission will make a determination as to whether the issue will be resolved by the Auraria board or by the Commission. Section 5.04 of this policy outlines the criteria the Executive Director will use in making this decision.
- 5.03.06 If the issue is presented to the Auraria board for resolution, the Auraria board must assure that there is an open hearing on the issue at a meeting prior to the meeting where the decision is made. If fiscal resources must be transferred as the result of the decision, a description of the transfer and the amount must be a part of the official Auraria board decision and must be forwarded to the Commission where it will be incorporated into Commission budget actions. Other procedures and criteria for arriving at a decision will be adopted by the Auraria board.
- 5.03.07 If the issue comes to the Colorado Commission on Higher Education, the Commission will arrange, as soon as possible at a regularly scheduled meeting, for a presentation by each of the involved parties on the definition of the issue and their proposed resolution. Based on this testimony, Commission staff will develop a recommendation for action by the Commission at its next regularly scheduled meeting.
- 5.04 Policies for Evaluating Operational vs. Academic Issues at the Auraria Center

The following policies will be followed by the Executive Director of the Commission in determining whether an issue is academic or operational at the Auraria Center.

5.04.01 Operational Issues

Issues falling primarily in any of the following areas will be considered operational for the purpose of dispute resolution on the Auraria Center.

- i. Management of any aspect of the grounds and shared or AHEC-owned facilities of the Auraria Center;
- ii. Issues surrounding the assignment of space among the three academic institutions;
- iii. Issues surrounding the assignment of classroom space in shared or AHEC-owned facilities;
- iv. All issues involving shared or commonly provided student services;
- v. Disputes arising between lessor and lessee under the respective ground leases between the Auraria board and the constituent institutions;
- vi. Issues involving auxiliary services (bookstore, childcare center, student center, parking, etc.)
- vii. Any issues involving purchasing by those constituent institutions utilizing AHEC purchasing services;
- viii. Issues involving the use of specialized facilities for equipment;
- ix. Issues involving the statutorily required common calendar; and
- x. Issues involving shared or AHEC-owned physical education, recreation, and athletic facilities.

5.04.02 Academic Issues

Issues falling primarily in any of the following areas will be considered academic for the purpose of dispute resolution on the Auraria Center.

- i. Issues involving the transfer or commonality of courses between and among constituent institutions;
- ii. Issues involving merged or consolidated academic departments;
- iii. Issues involving major shared academic resources except the funding support of the academic library;
- iv. Issues involving the use of academic personnel;
- v. Issues involving the curriculum of academic degree programs;
- vi. Issues involving the support of the Auraria library by the three constituent institutions.

6.00 Principles and Procedures for Dispute Resolution Outside of the Auraria Context

6.01 Principles for Dispute Resolution Outside of the Auraria Context

The principles the Commission will adhere to in resolving disputes outside of the Auraria context are listed below.

- 6.01.01 Disputes between and among institutions should be resolved to the extent possible by institutional representatives engaging in discussion and negotiation in a spirit of collegiality. The Commission will directly involve itself in the resolution of disputes as infrequently as possible.
- 6.01.02 Institutions are encouraged to utilize Department staff and peer networks as resources, and to use stakeholder meetings as an opportunity for collegial discussion and negotiation of conflicts and disputes before they are brought to the attention of the Commission. For example, disputes of an academic nature might be brought to the Academic Council for discussion and potential resolution. Disputes of a financial nature might be brought to the group of institutional chief financial officers. When appropriate, the Chief Executive Officers group should be used to resolve conflicts and disputes before they are brought to the Commission.
- 6.01.03 Disputes brought to the Commission for resolution must relate to one or more Commission policies and be centered on an institution's alleged misinterpretation of, or non-compliance with, a Commission policy, including but not limited to service areas, academic program offerings and delivery, student transfer, admissions activity, tuition classification, concurrent enrollment, prior learning assessment, and developmental education.
- 6.01.04 Any disputes brought to the Commission for resolution must be among institutions operating under different governing boards. The Commission will not engage in dispute resolution between or among institutions operating under the same governing board.
- 6.01.05 As a coordinating agency, the Commission operates in partnership with governing boards and institutions to advance postsecondary opportunities for Coloradoans in response to the declarations outlined by the General Assembly in §23-1-101, C.R.S. As articulated in §23-1-102(2), C.R.S., "the governing boards and institutions of the public system of higher education in Colorado, including the university of Colorado, are obligated to conform to the policies set by the commission within the authorities delegated to it in this article."
- 6.01.06 Any decisions rendered by the Commission in the resolution of disputes among institutions are final. Alternatives for resolution of disputes exist only within the General Assembly or the legal system.

6.02 Procedures for Dispute Resolution Outside of the Auraria Context

The procedures the Commission will adhere to in resolving disputes outside of the Auraria context are listed below. Only the chief executive officer of a governing board or her/his designee can bring a dispute with another institution to the Commission for resolution.

- 6.02.01 A letter must be sent by a chief executive officer to the Executive Director of the Department of Higher Education articulating:
 - i. The specific Commission policy or policies at the center of the dispute;
 - ii. How the actions or inactions of another institution or institutions are in conflict with the policy;
 - iii. How the actions or inactions of the other institution(s) potentially cause harm to the institution bringing the dispute to the Commission, or to students, or to postsecondary education in Colorado;
 - iv. The steps taken by the institution bringing the dispute to the Commission to resolve the matter, including details describing how the institution has attempted to address the issue with the other institution(s);
 - v. The outcome that is desired upon resolution of the dispute by the Commission.

- 6.02.02 Upon receipt and acknowledgment of the letter from the chief executive officer, the Executive Director or her/his designee will notify the chief executive officer(s) of the institution(s) identified in the letter about the dispute, including a copy of the letter itself, and invite a written response within 30 days. A copy of the written response(s) will be sent to the chief executive officer(s) of the governing board(s) bringing the dispute to the Commission.

- 6.02.03 Department staff will engage in additional fact finding and information collection in order to provide a comprehensive accounting and assessment of the dispute to the Commission. The Commission Chair will arrange, as soon as possible at a regularly scheduled meeting, for a presentation by each of the involved parties on the dispute and their proposed resolution. Following these presentations and discussions with the Commission, Department staff will develop a recommendation for action by the Commission at its next regularly scheduled meeting.

- 6.02.04 Once a decision is made by the Commission, notification of the decision and any expected actions on the part of the institutions involved will be communicated to the institutions within 7 days. Following notification, institutions will have 30 days to report to Department staff on the steps they have taken or will take to respond to the expected actions. The Commission may request progress reports from Department staff until the Commission is satisfied that the dispute is fully resolved. The

Commission may also request that institutional chief executive officers or their designees attend a Commission meeting to provide a report on progress made toward resolution of the dispute.

History: CCHE Agenda Item – July 1, 1987; CCHE Agenda Item II.C.ii – April 5, 2019; CCHE Agenda Item III.A – June 6, 2019. For all history prior to 1999, please see physical CCHE agenda books located at the Department of Higher Education.