



Bay Mills Indian Community

12140 West Lakeshore Drive
Brimley, Michigan 49715
(906) 248-3241 Fax-(906) 248-3283



RESOLUTION NO. 16-12-5

Resolution to adopt the Bay Mills Community College Student Complaint Ordinance of the Bay Mills Indian Community

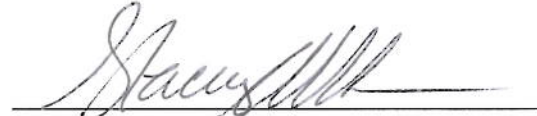
- WHEREAS:** The Bay Mills Indian Community is a federally recognized Indian Tribe with a Constitution enacted pursuant to the Indian Reorganization Act of 1934, (28 Stat. 984) as amended by the Act of June 15, 1935 (49 Stat. 378); and,
- WHEREAS:** The general tribal council, by resolution adopted April 13, 1970 delegated to the Executive Council, the power to negotiate and execute agreements on behalf of the Bay Mills Indian Community; and,
- WHEREAS:** pursuant to its constitutional powers and inherent rights of sovereignty, the Bay Mills Indian Community has granted a Tribal Charter to the Bay Mills Community College to operate and run a post-secondary institution of educational and vocational training as authorized by the Tribally Controlled Colleges and Universities Act of 1978, found at 25 U.S.C. Section 1801, et. seq.; and,
- WHEREAS:** as an institution of higher education, the College is required by law to have a process in place that provides assurance that the College will follow applicable Tribal requirements or laws that would include in part, a process to review and appropriately act on complaints concerning the College; and,
- WHEREAS:** the requirements to provide assurances are necessary in order for the College to participate in Title IV Federal Student Aid Programs; and
- WHEREAS:** the Bay Mills Indian Community does not currently have an ordinance that allows the Tribe to handle complaints against the College and has instead, required the College to develop their own internal policies and procedures to process complaints against the College; and
- WHEREAS:** Title 34 CFR §668.43(b) requires that institutions: "make available for review to any enrolled or prospective student upon request, a copy of the documents describing the institution's accreditation and its State, Federal, or tribal approval or licensing. The institution must also provide its students or prospective students with contact information for filing complaints with its accreditor and with its State approval or licensing entity and any other relevant State official or agency that would appropriately handle a student's complaint."
- NOW, THEREFORE BE IT RESOLVED** that the Bay Mills Executive Council adopts the proposed "Bay Mills Community College Student Complaint Ordinance of the Bay Mills Indian Community" to comply with federal law and to have a fair process to resolve student complaints against the Bay Mills Community College.

APPROVED:



**Levi D. Carrick, Sr., Chairman
Bay Mills Indian Community**


ATTEST:



**Stacey A. Walden, Secretary
Bay Mills Indian Community**

CERTIFICATION

I, the undersigned, as Secretary of the Bay Mills Indian Community Executive Council, do hereby certify that the above Resolution was adopted and approved by the Bay Mills Executive Council at Bay Mills, Michigan on the 5th day of December 2016 with a vote of 4 for 0 opposed 0 absent and / abstaining. As per provisions of the Bay Mills Constitution, the Tribal Chairman must abstain except in the event of a tie.



**Stacey A. Walden, Secretary
Bay Mills Indian Community**

BAY MILLS COMMUNITY COLLEGE STUDENT COMPLAINT ORDINANCE OF THE BAY MILLS INDIAN COMMUNITY

SECTION 1 PURPOSE

The purpose of this ordinance is to comply with U.S. federal regulations. Title 34 CFR §668.43(b) requires that [educational] institutions:

"make available for review to any enrolled or prospective student upon request, a copy of the documents describing the institution's accreditation and its State, Federal, or tribal approval or licensing. The institution must also provide its students or prospective students with contact information for filing complaints with its accreditor and with its State approval or licensing entity and any other relevant State official or agency that would appropriately handle a student's complaint."

Accordingly, the Bay Mills Indian Community, as the legal entity who chartered the Bay Mills Community College, adopts the "Bay Mills Community College Student Complaint Ordinance of the Bay Mills Indian Community" as stated below.

SECTION 2 DEFINITIONS

A "Complaint" is an appeal filed by a student of the Bay Mills Community College ("BMCC"), which claims that an action taken against the student is wrongful because it:

- A. Violates or misinterprets a specific provision of the BMCC Policies, or a departmental procedure;
- B. Constitutes an unfair application of a provision of the BMCC Policies or a department procedure.
- C. Violates an applicable state, federal, or administrative law or rule.

SECTION 3 EXHAUSTION OF ALL REMEDIES REQUIRED

The BMCC student must first exhaust all administrative and school due process procedures before filing a Complaint with the Bay Mills Indian Community Executive Council ("BMIC EC"). The first course of action must be to try to resolve the complaint directly with the administration of the college. The BMIC EC will not review a complaint until all grievance procedures at the college have been followed, all avenues of appeal exhausted, and documentation provided that such procedures have been exhausted.

SECTION 4 TYPES OF COMPLAINTS

The BMIC EC handles only those complaints that concern educational programs or practices of the college. The BMIC EC does not:

- A. handle anonymous complaints.
- B. intervene in matters concerning an individual's grades or examination results as these are the prerogative of the college's faculty.
- C. intervene in human resources matters.
- D. handle complaints concerning actions that occurred more than five years ago.
- E. intervene in matters that are or have been in litigation.

SECTION 5 COMPOSITION OF THE COMPLAINT BOARD

- A. Complaints shall be heard by a Complaint Board, composed of the five (5) members of the Executive Council.
- B. Members to the Complaint Board shall serve for the duration of their term, unless:
 - i. A resignation is submitted in writing to the Executive Council;
 - ii. The Executive Council member removes himself/herself from a specific case on the grounds of bias and/or conflict of interest and submits the reasons in writing to the Executive Council.
- C. At the beginning of each term, the Complaint Board may select from among its members a Chief Presiding Officer, who shall conduct all hearings before the Complaint Board.
- D. A member of the Complaint Board shall disqualify himself/herself from participating in a Complaint hearing in which the member's impartiality might reasonably be questioned.
- E. Grounds for disqualifying a member of the Complaint Board are the following:
 - i. The member has personal knowledge of facts relevant to the Complaint and may be called as a witness by one of the parties;
 - ii. A party to the Complaint hearing is the member's spouse or an individual who resides in the member's household;
 - iii. The member is a party to the Complaint hearing; or,
 - iv. The member has engaged in any *ex parte* discussion about the substance of the grievance with any person who is not a member of the Complaint Board.

SECTION 6 RETALIATION AND/OR INTERFERENCE IS PROHIBITED

Students shall be free to use the Complaint procedure without restraint, interference, coercion, discrimination or reprisal. No student, whether acting in an official capacity of the Tribe or on any other basis, shall interfere with or attempt to interfere with another student's exercise of his or her rights under this Section. However, nothing in this Section prevents the reprimand of a student for abuse of the Complaint procedure by filing a Complaint in bad faith or for the purpose of delay or harassment.

SECTION 7 COMPLAINT CONTENTS

- A. A Complaint is initiated by the student's filing of a written appeal of the adverse action taken against him/her with the Executive Council's recording secretary. The written statement must be filed within five (5) working days of the date on which the student was officially notified of the action taken.
- B. The statement must contain the following information:
 - i. Description of the action which the student appeals (including attachment of the written notice of disciplinary action taken, if such a document exists);
 - ii. Identification of the law, administrative rule or BMCC policy or department procedure which the student claims was violated or unfairly applied;

- iii. Identification of the person(s) who took the disciplinary action;
- iv. Listing of persons that the student believes have relevant information regarding the circumstances resulting in the disciplinary action;
- v. Description of student's view of the proper interpretation and/or application of the BMCC policy or department procedure; and
- vi. Requested action by the Complaint Board.
- vii. The filing of a Complaint shall not cause the contested disciplinary action to be suspended or stayed pending the decision of the Complaint Board.

SECTION 8 DISTRIBUTION OF COMPLAINT

Upon receipt of the complaint, the Executive Council's recording secretary shall immediately provide a complete copy of the Complaint to each of the Complaint Board members, with a copy to the person(s) whose action is appealed and to the President of the Bay Mills Community College. Any documents thereafter filed by the student with the Executive Council's recording secretary shall be likewise distributed to all the above-named individuals.

SECTION 9 HEARING DATE AND NOTICE

The Complaint Board shall hold its hearing on the student's appeal not less than three (3) but not more than fourteen (14) days from the date the appeal was filed. The Executive Council's recording secretary shall issue a written notice stating the time, date and place for the appeal hearing. The notice shall also advise the parties of the hearing procedure, as described below.

SECTION 10 COLLEGE PRESIDENT MAY OVERTURN ACTION

Prior to the hearing date set by the Complaint Board, the College President may unilaterally overturn the appealed action, but only if the action is determined to be a misapplication of the BMCC policy or Department procedure, or that the policy or procedure was unfairly applied. Such a determination shall be made in writing and provided to the student, the applicable College Department and the Executive Council's recording secretary. This action shall automatically terminate the Complaint procedure and the Complaint Board shall not consider the student's grievance.

SECTION 11 HEARING PROCEDURES

The Complaint Board shall conduct all hearings according to the procedures delineated in this Section.

- A. The student may be represented by legal counsel at his/her own expense, provided that the retained counsel is admitted to practice in the Bay Mills Indian Community Tribal Court. In the event that the student retains legal counsel, the Complaint Board may consult with and request the presence of the Tribe's legal counsel at the hearing.
- B. The student (or legal counsel) shall provide a written list of witnesses to the Executive Council's recording secretary not less than 48 hours prior to the scheduled hearing date.

- C. In the event that the student fails to appear at the scheduled Complaint hearing without prior notice and a showing of good cause for not appearing, the Complaint shall be dismissed and the contested disciplinary action shall remain in effect.
- D. The Chief Presiding Officer shall preside over the hearing. If that individual is not available for any reason, the Complaint Board members shall designate another Board member to preside.
- E. The hearing shall be recorded by the Executive Council's recording secretary or his/her designee.
- F. Only the members of the Complaint Board, the student, counsel and the recording secretary shall be present throughout the hearing. Witnesses shall be present only at the time of their testimony.
- G. The hearing shall commence with the presentation by the student of any and all evidence, including testimony by the student and other witnesses, concerning the appealed action. Any person called by the student in support of the appeal shall be subject to questioning by members of the Complaint Board.
- H. The Complaint Board may call as a witness any person who the Board determines has relevant, non-cumulative evidence to disclose regarding the appealed action. Such testimony may include the viewing of surveillance evidence, which is authenticated by the testimony of an employee responsible for the collection, recordation, and maintenance of such information.
- I. Any witness called by the Complaint Board shall be subject to cross-examination by the student (or legal counsel).
- J. A written statement by any person who does not testify shall not be received into evidence and considered by the Complaint Board, unless the person is unavailable to testify due to illness or other condition deemed good cause to excuse the person from appearing in person, and in addition, only when the Complaint Board determines that the individual's statement contains credible, unbiased and relevant information.
- K. The Complaint Board may limit the total amount of time that the student (or legal counsel) may use to present the appeal and may allow the student (or legal counsel) to make a closing statement as to why the action was unfairly applied or violated a law, BMCC policy or a Department procedure applicable to the student's position.

SECTION 12 COMPLAINT WITHDRAWAL

The student may withdraw his/her Complaint at any time prior to the issuance of a decision by the Complaint Board.

SECTION 13 DELIBERATIONS AND DECISION

- A. Upon conclusion of the hearing, the Complaint Board shall deliberate in private and shall issue a written decision within three (3) days of the hearing, which identifies the facts upon which it relies to determine whether the action:
 - i. Was in conformance with the applicable BMCC policy, law, rule, or with a Department procedure applicable to the student's position; or,

- ii. Was an unfair application of applicable policies and/or procedures.
 - iii. The Complaint Board decision shall clearly identify the policy or policies, law, rule, regulation, or procedure which it considers relevant to the action under review, and specify in what manner the policy was, or was not followed. The Board shall likewise clearly identify the department procedure, if any, which is relevant to the case under review and specify in what manner the procedure was, or was not followed. The Board may rely on its previous decisions' interpretation of a specific policy or procedure as a means to ensure consistent application of that policy or procedure to other students who are similarly situated.
- B. Any decision of the Complaint Board shall be made by a majority of the members who sat on the Complaint hearing. Those members in agreement with the decision shall sign the written opinion. If no majority is reached on a decision, the disciplinary action is upheld and remains in effect.
- C. The Complaint Board may decide to uphold or reverse an adverse action, provided that the written decision comports with section 11 above. The Complaint Board may decide to modify an adverse action, but only upon finding that the progressive disciplinary process was applicable, but not followed.

SECTION 14 RECORDING SECRETARY DUTIES

- A. The Executive Council's recording secretary shall facilitate the issuance of the written decision of the Complaint Board within the time period specified above, and shall immediately transmit to the student by certified mail a copy of the decision. The recording secretary shall also provide a copy of the decision to the President of the Bay Mills Community College.
- B. Any and all records of the Complaint hearing shall be maintained by the Executive Council recording secretary for the sole benefit of the Complaint Board.

SECTION 15 FINAL DECISION

Unless the complaint is a violation of an applicable state or federal law or administrative rule, the of the Executive Council Complaint Board is final.

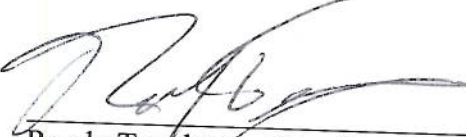
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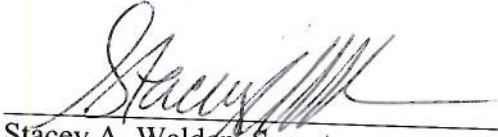
Date: December 5, 2016

The following item was voted on by the Bay Mills Executive Council:

Approve Resolution No. 16-12-5 – to adopt Bay Mills Community College Student Complaint Ordinance of the Bay Mills Indian Community.

 Yes ____ No ____ ☒ Abstain
Levi D. Carrick, Sr., President

 Yes ☒ ____ No ____ Abstain
Randy Touchtone, Vice-President

 Yes ☒ ____ No ____ Abstain
Stacey A. Walden, Secretary

 Yes ☒ ____ No ____ Abstain
Albert Bertram, Treasurer

 Yes ☒ ____ No ____ Abstain
Arlen P. Kuzmik, Councilman

MOTION: ☒ Approved ____ Denied ____ Tabled