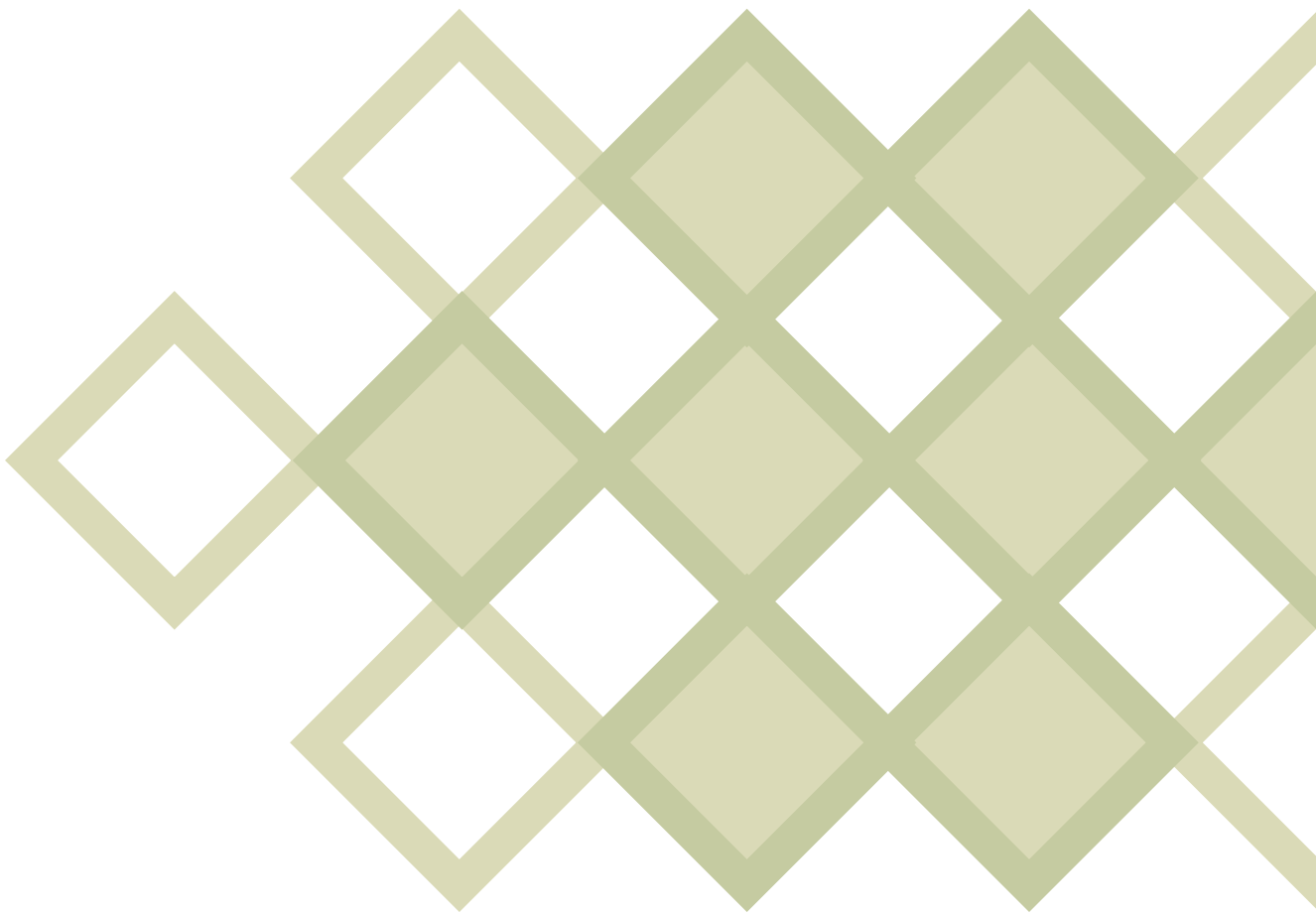


Office for Conflict Resolution

Annual Report 2014-15



Office for
Conflict Resolution

UNIVERSITY OF MINNESOTA
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The Office for Conflict Resolution is a resource for non-bargaining unit University faculty, staff, and student employees to help them resolve workplace disputes—either through informal problem-solving initiatives or a peer hearing process. By listening to faculty, staff, and student employment concerns and offering a range of processes to respond to concerns, the office promotes a University culture of engagement and achievement. The OCR is a neutral and independent office; it is not part of either the Office of Human Resources or the Office of the General Counsel. Conflict resolution services are offered confidentially, subject only to a limited exception for cases involving the serious risk of self-harm or harm to others.



Board of Regents policy: *Conflict Resolution Process for Employees* and the implementing administrative procedures require that the office prepare an annual report about the work of the office, including a summary of issues raised, decisions rendered in the hearing process, and the instances in which the Senior Vice President for Academic Affairs and Provost declined to accept the recommendations of a peer panel. The policy and procedures also require that this report be distributed to senior administrators and governing councils for faculty, staff, and students.

This annual report covers the period July 1, 2014, through June 30, 2015 (FY15).



SUMMARY DATA ON CONFLICT RESOLUTION PROCESSING IN 2014-2015

Consultations and Informal Assistance

Informal conflict resolution matters are the largest part of the office workload. Consultations are face-to-face meetings (or sometimes video or telephone conferences, particularly with employees on system campuses) about workplace concerns or problems. The following statistics count the people who came to the office for one or more consultation meetings in FY15. Some consultations resulted in several meetings conducted over many months. Telephone inquiries and referral calls are not counted in the total number of consultations.

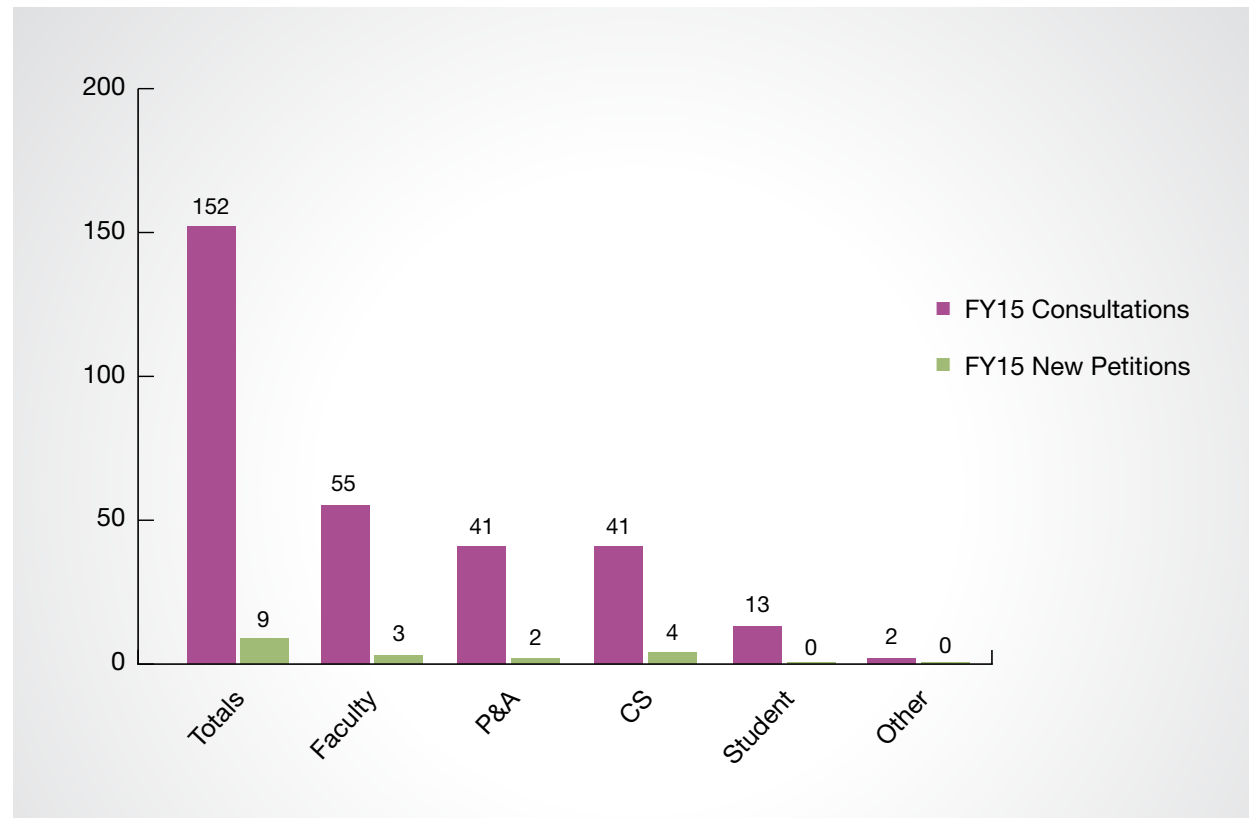
In FY15, office staff conducted 152 consultations, compared to 144 in FY14. Of these 152 matters, 55 were with faculty members; 41 with Professional & Administrative (“P&A”) employees; 41 with Civil Service employees; 13 with graduate and undergraduate student workers; and two were with retirees or people in other employment categories. Nine of the 152

consultation matters resulted in the employee filing a petition.

Petitions

Petitions are formal complaints that allege a violation of a University rule, regulation, policy, or practice. A three-person peer panel conducts a hearing and makes recommendations to the Senior Vice President for Academic Affairs and Provost, who makes the final University decision. During FY15, there were 14 open petitions—nine newly filed ones and five from FY14 that were continued for processing in FY15. Of the nine new petitions, four were filed by Civil Service staff, three by faculty, and two by P&A staff. There were no petitions filed by students this year.

Of the 14 open petitions processed in FY15, five settled or were withdrawn without a hearing, five resulted in peer hearings, and four were carried forward for processing in FY16.



Jurisdictional Challenges and Advisory Determinations

Informal consultations are available to faculty and staff without jurisdictional thresholds. There are jurisdictional requirements, however, for initiating a formal petition requesting a peer hearing.

The Conflict Resolution Policy provides a procedure for determining if a particular matter is within the jurisdiction of the peer hearing process. When there is a jurisdictional challenge, the Director makes an advisory determination on the jurisdictional issue, which is subject to review by the Senior Vice President and Provost.

In FY15, three advisory jurisdictional determinations were issued.

In the first matter, a faculty member filed a petition alleging breach of his original employment agreement, violation of departmental policy and the tenure code in connection with a salary reduction, and violation of certain procedures applicable to the annual review process. The respondent raised a jurisdictional challenge alleging that the petition was not timely filed.

Following careful review of the evidence submitted, the Director determined that petitioner's claims were time-barred. The Director further determined that petitioner should be allowed to submit an amended petition relative to his 2013-14 annual performance review or, if applicable, an alleged continuing course of harassment and retaliation.

Neither party appealed the jurisdictional ruling. The petitioner subsequently filed an amended petition as permitted by the Director but failed to assert an actionable violation of University policy. The petition was dismissed. Neither party appealed the dismissal.

In the second matter, a Civil Service employee filed a petition contesting the termination of his employment. The respondent challenged the petition alleging that it had not been timely filed, that review was improper because the termination had already been investigated by the Office of Equal Opportunity and Affirmative Action and that a peer panel lacked the authority to issue the requested remedy.

After review, the Director determined that the petition had been timely filed, that the petitioner's claims regarding his termination had not been previously reviewed, and that the requested remedy was within the authority of a peer panel to grant.

The respondent appealed the jurisdictional determination to the extent it allowed the petitioner to challenge disciplinary actions that a) occurred more than six months prior to his termination and b) were the subject of a prior petition. The Director issued a ruling clarifying that while the petitioner had satisfied the jurisdictional requirements relative to the review of his termination, earlier acts of discipline that had been the subject of prior petitions could not be challenged. Neither party appealed the amended decision.

In the final matter, a P&A employee filed a petition contesting the non-renewal of her appointment. The respondent challenged the jurisdiction of the office, arguing that University policy provides that non-renewal can be for any reason or no reason at all so long as it does not violate another University policy or the legal rights of the employee. In response, the petitioner argued that email communications with the University established a three-year employment



contract. As a result, she asserted her non-renewal actually constituted early termination and was not in compliance with applicable policy. Reviewing respondent's challenge, the Director determined that the employee's offer letter clearly described the appointment as annually renewable rather than multi-year. It also instructed the employee to review the notice of appointment and report any errors to the University immediately. Finally, University policy provides that an employee's notice of appointment controls the terms and conditions of appointment and supersedes any other commitment (except in limited circumstances not present here). For these reasons, the Director dismissed the petition. Neither party appealed the decision.

Peer Hearings And Decisions of the Senior Vice President for Academic Affairs and Provost

A peer hearing on a petition is conducted before a three-person panel of University faculty or staff. A hearing officer is selected from a roster of hearing officers nominated by faculty and staff committees and appointed by the Vice President for Equity and Diversity. A second panel member is selected by the petitioner from a roster of panelists appointed by representative employee committees. A third is appointed by the responsible senior administrator. After the hearing, the panel prepares a written recommendation that is distributed to the parties and to the Senior Vice President and Provost, who makes the final University decision on the matter.

In FY15, there were three peer hearings, involving five petitioners. This is compared to three held in FY14 for three petitioners.

In the first matter, a faculty member challenged the non-renewal of his administrative appointment, alleging that non-renewal violated the terms of an earlier retention agreement. The hearing panel disagreed, and found that the non-renewal fell within the broad discretion accorded to the University under applicable policy. The Senior Vice President and Provost agreed with the panel. The petitioner appealed, and submitted the case to arbitration. The arbitration process and outcome are described below.

The second hearing involved three faculty members who challenged actions of the Dean relative to certain University of Minnesota Foundation funds that resulted in restrictions on their access to donated funds. The respondent challenged jurisdiction, arguing that the petitions did not present an issue relative to the faculty members' employment. A non-precedent setting agreement was reached allowing the issues to be reviewed by a special panel convened for that purpose. After hearing, the panel issued a split decision. Two members found that although the challenged actions did not violate law or

policy, the petitioners were not provided with appropriate notice of changing expectations regarding management of Foundation funds. As a result, the majority felt that control over certain funds should be returned to the petitioners. The dissenting panel member, while recognizing that the implementation of the decision was poorly handled, found no violation of University policy and felt that no remedy should issue. The Senior Vice President for Academic Affairs and Provost agreed with the dissenting opinion, finding that no remedy was appropriate in the absence of any established policy violation.

A third petition was filed by a faculty member whose University appointment was terminated following the non-renewal of his appointment with University of Minnesota Physicians. The petitioner alleged that his termination violated University policies governing 1) equity, diversity, equal opportunity and affirmative action, 2) employee recruitment and retention, 3) employee performance evaluation and development, 4) reporting concerns and addressing misconduct, and also that 5) a supervisor had tortiously interfered with his

employment. The hearing panel found no violation of first or second policies listed above, but agreed that policies governing performance evaluation and development, and reporting concerns and addressing misconduct had been violated. The panel further found petitioner had been the victim of tortious interference. The Senior Vice President for Academic Affairs and Provost disagreed, finding that, once petitioner's UMP appointment was terminated, the independent decision to terminate his UMN appointment did not violate any applicable law or policy. The petitioner has appealed the matter through Writ of Certiorari to the Minnesota Court of Appeals where it remains at the time of this report.

Arbitration Hearings

If a petitioner receives an unfavorable decision from either a peer hearing panel or from the Senior Vice President and Provost, the petitioner may elect to proceed to binding arbitration. To proceed to arbitration, the petitioner waives rights to pursue the claim in another forum.

During FY15, there was one arbitration hearing; there were none in FY14. In FY15, a faculty member appealed the unanimous decision of a peer hearing panel finding that the non-renewal of his administrative appointment did not violate University policy. An external, neutral arbitrator was mutually selected by the parties. The petitioner appointed one faculty member to the arbitration panel. The University appointed the third faculty panel member. After hearing, the panel issued a unanimous decision dismissing the petitioner's claim. Pursuant to this policy, the arbitration award is final and binding. No additional review of the issue is permitted in a different forum.



System Campuses

The Conflict Resolution Policy applies to all campuses. In FY15, there were 12 consultations and one petition filed involving faculty, P&A, and Civil Service staff on system campuses.

Issues and Trends

It is difficult to provide an accurate general picture of the issues raised in FY15, since several issues may fuel an individual complaint. Nonetheless, some consistent observations and trend data have emerged. The concern most commonly presented by all employee categories - faculty, staff and students - involved disrespectful working behaviors. Specific behaviors typically included poor communication, an inability or unwillingness to hear and respond to employee concerns and perspectives, behaviors that were intimidating, insulting or shaming in both private and public settings, disrespectful email communication and inconsistent application of rules and policies. The policy most often cited in informal consultations was Board of Regents policy: *Code of Conduct*.

Issues have broadly arisen regarding the job family studies. Some employees feel they have been reclassified into an incorrect employment category or job code or that the reclassification has inappropriately resulted in a reduction of available benefits or application of a salary cap. Others expressed concern that the salary range identified for particular positions is not accurate based on comparable market data. These concerns were heightened by the refusal to share specific information regarding the criteria on which determinations were made and salary ranges established. Finally, concerns

were expressed that the job family study did not adequately address pre-existing salary equity concerns which now persist.

For tenured and tenure-track faculty, concerns regarding promotion, tenure, and academic freedom go to the Senate Judicial Committee. Most other issues can be brought to the Office for Conflict Resolution. This year, the most common concerns raised by faculty involved teaching assignments, academic freedom, failure of administrative leaders to respond to concerns orally or in writing, review processes, resource allocation, and work environments.

For Civil Service employees, concerns were raised about discipline, violation of Civil Service Rules regarding termination of employment, benefits, difficult working relationships, performance issues, and poor supervision. Dissatisfaction was expressed with reclassification and/or salary after the results of the job family study were announced. Concerns about work environments at the local level were recurring matters.

Most P&A employees are on annually renewable contracts and are often cautious about raising concerns. P&A issues included non-renewal (specifically, being surprised by non-renewal where no performance concerns had previously been addressed), poor communication and working relationships, violation of P&A contracts, salary equity, and removal from an administrative position.



ADDITIONAL ACTIVITIES BY THE OFFICE FOR CONFLICT RESOLUTION AND THE ADVISORY COMMITTEE

Educational Initiatives and Programming

The Office for Conflict Resolution designed and delivered educational programming to faculty and staff on issues of effective communication, navigating conflict, responding to rude or abrasive conduct, and promoting a local culture of engagement.

This programming emphasizes that conflict is an inevitable product of complex human relationships. If approached as an opportunity rather than a failure, it stimulates growth and learning. Conversely, conflict that is ignored or avoided rarely disappears but rather festers and results in increasingly severe negative impacts in the workplace. Even low levels of disruptive behavior result in decreased effort, impaired performance, decreased engagement, increased absenteeism and increased turnover. Additionally, the anxiety and stress that accompanies unaddressed workplace conflict negatively affects the physical and mental health and wellbeing of employees at all levels. Training provides practical assistance to employees wishing to raise concerns in a constructive manner and to leaders wishing to increase their effectiveness in managing difficult situations. Additionally, the programming addresses the role of active bystanders – those colleagues who identify and object to inappropriate conduct or treatment of others but remain unsure of whether and how to respond. Departments and units willing to invest in a proactive approach to these issues help to establish and promote an environment in which all can be welcome.

Program partners and sponsors include the Office for Equity and Diversity (“OED”), the Dean’s Office in the Medical School, the Conflict Resolution Advisory Committee, Graduate Medical Education, University Libraries and the Clinical and Translational Science Institute.

Outreach and Engagement

The Office for Conflict Resolution continues an active role in the Academic Civility Workgroup. This group is convened by the Student Conflict Resolution Center. In FY 2015, the Director partnered with the Director of the Student Conflict Resolution Center to manage the Working Better Together (“WBT”) website, <http://wbt.umn.edu>. The WBT website provides resources for University employees on a variety of topics, and highlights articles of interest to the entire University community. The Committee also worked with University Relations to develop a new initiative to promote an effective and inclusive environment at the University. This initiative promotes equity and diversity by demonstrating that a grass roots collaboration of faculty, staff, and students working together to promote change in the University culture can help identify best practices and can equip University members with tools and resources that increase their ability to have a positive, beneficial impact.

In addition to the Student Conflict Resolution Center, program partners include the Center for Educational Innovation, the Council of Graduate Students, Boynton Health Service, and the offices of Graduate Medical Education and Minority Affairs and Diversity of the Medical School.

Partnership with the Office for Equity and Diversity

The Office for Conflict Resolution is an independent, neutral and confidential resource for faculty, staff and student employees. The office is one of nine offices within the Office of Equity and Diversity at the University. These offices partner in advancing a climate that is inclusive, respectful and collaborative. In FY 2015, the Director joined the OED training team and worked with the OED Director of Education in providing requested programming to various units and departments. In addition, the Director presented a Success Signals workshop focused on reducing conflict through effective communication to the OED leadership team.

Mary Tate, a consultant with our office and Director, Minority Affairs and Diversity, Medical School, continues to provide additional resources for University employees and is available for consultation to any employee concerned about a potential conflict of interest otherwise presented in the office.

Advisory Committee and Annual Survey

An Advisory Committee oversees the work of the Office for Conflict Resolution. It addresses policy concerns and reports on the work of the office to Katrice Albert, Vice President for Equity and Diversity. Rod Squires, Associate Professor, Geography, Environment, and Society, served as Chair of the Conflict Resolution Advisory Committee in FY15.



In FY15, the Committee developed mission and vision statements to support and guide the work of the Office. The Committee also revised the standards for assessment of office performance. An email survey to petitioners and those who consulted with this office was sent in FY15 to assist in evaluation of the work of the office. The emails solicited anonymous responses, which are reviewed by the Advisory Committee and forwarded with an annual report on the performance of the office to the Vice President for Equity and Diversity.

Visitors to the office reported that it was most helpful to have a confidential, neutral third party available to discuss their concerns. Participants appreciated help in identifying and reviewing options and available resources, as well as assistance with strategies for appropriately communicating their concerns. Participants expressed satisfaction with the quality of the office's services.

FY15 Conflict Resolution Advisory Committee:

Roderick Squires - Chair, Associate Professor
Geography

Shelley Berken, Teaching Specialist
Curriculum & Instruction (CEHD)

Carolyn Davidson, Business Analyst
Academic Support Resources

Ralph Fairchild, Medical Fellow
Vascular Surgery

Michael LuBrant, Program Director/
Assistant Professor
Program of Mortuary Science

Jon Steadland, Associate to the Deputy
Chief of Staff for Policy and Initiatives
Office of the President

Staffing

The University of Minnesota and the Office for Conflict Resolution would like to recognize and thank former Director Carolyn Chalmers for her long and outstanding service to the University and for her excellent work in the field of conflict resolution. Following Chalmers' retirement in June 2014, Tina Marisam acted as Interim Director of the office from June - August 2014. Julie Showers was appointed Director in August 2014 and was responsible for the coordination of the work of the office for the remainder of FY15.

We also thank former Program Administrator Jean Henrichsen, who retired in June 2015 after many years of dedicated and excellent service to the University and the Office for Conflict Resolution. Amanda Olson assumed the position of Program Coordinator following Henrichsen's retirement.

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