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SR-04-05-(10) 67 BAPC

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**BUDGET AND ACADEMIC POLICY COMMITTEE  
RECOMMENDATION**

**SR-04-05-(10) 67 BAPC**

Recommends approval of the attached revision to the current on-line version and the up-coming printed version of the 2005-2007 Undergraduate Catalog in the Academic Information section under Additional Academic Information on pages 94 – 100. The section Academic Appeals is revised and a new subsection called "Hearing Panel" is added. (Deletions are shown as ~~strikethrough~~ and new language is shown in **bold**)

**RATIONALE:**

The sections of the Catalog pertaining to Academic Hearings are inaccurate and have been a source of confusion to student appellants and faculty appellees. This must be corrected now that attorneys are allowed to participate in Academic Hearings.

The rationale for this revision is to comply with the legal principle that under state and federal law student's rights are protected for: 1. Procedural due process (notification of charges and right to appeal) and notice (of the rules by which they are subject to, provided in the Undergraduate and Graduate Catalogs). 2. Fairness (decision is not a departure from academic norms, is not arbitrary or capricious, standards are fairly applied to everyone and there is an absence of bad faith or ill will).

Specifically, the Academic Appeals Board subsection is revised to describe the function and purpose of the Board. The Hearing Procedures subsection is revised to describe the role of attorneys and the role of the Hearing Panel. The Hearing Panel subsection is added to describe its function and purpose. These revisions will protect the student's rights to procedural due process and to fairness.

**FACULTY SENATE CHAIR:**

APPROVED

BY SENATE:

*Larry Stickle*

DATE:

*11/22/2004*

DISAPPROVED

BY SENATE:

DATE:

**UNIVERSITY PRESIDENT:**

APPROVED:

*[Signature]*

DATE:

*12/3/09*

DISAPPROVED:

DATE:

**COMMENTS:**

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## Academic Appeals

### I. Academic Appeals

The intent of the appeals process is to treat all parties fairly, and to make all parties aware of the appeals procedure. ***Please Note: Notwithstanding any other provision in Marshall University catalogs or policy documents, any student who is or will be dismissed from a program or from the University as a direct and immediate consequence of any academic sanction administered by the University may, at his or her own discretion and expense, retain legal counsel for representation during all relevant administrative appeal proceedings.***

#### A. Student Appeals for Instructor Imposed Sanctions:

In cases where a student is appealing a grade, the grade appealed shall remain in effect until the appeal procedure is completed, or the problem resolved.

In those cases in which a student has received an instructor-imposed sanction, including a lower final grade in or failure of the course or exclusion from further participation in the class, the student shall follow the procedures outlined below:

1. The student should first attempt a resolution with the course instructor. This initial step must be taken within ten (10) days from the imposition of the sanction or, in the case of an appeal of a final grade in the course, within thirty (30) days of the beginning of the next regular term. The student who makes an appeal is responsible for submitting all applicable documentation. The course instructor is to respond to the student in writing within ten (10) days after the student has submitted the appeal documentation. If the course instructor does not respond to the student in the given time frame, the appeal process continues to the next level. If the instructor is unavailable for any reason, the process starts with the department chairperson.
2. If the procedure in Step 1 does not have a mutually satisfactory result, the student may appeal in writing to the department chairperson within ten (10) days after the action taken in Step 1, who will attempt to resolve the issue at the departmental level. The department chairperson is to respond to the student in writing within ten (10) days after the student has submitted the appeal documentation. If the department chairperson (or representative) does not respond to the student in the given time frame, the appeal process continues to the next level. When a student appeals a final grade, the faculty member must provide all criteria used for determining grades.
3. Should the issue not be resolved at the departmental level, either the student or instructor may appeal in writing to the Dean of the college in which the course is offered within ten (10) days of the action taken in Step 2. The Dean is to respond to the student or instructor in writing within ten (10) days after the student has submitted the appeal documentation. If the Dean (or representative) does not respond to the student in the given time frame, the appeal process continues to the next level. The Dean will attempt to achieve a mutually satisfactory resolution. The Dean of the college in which the student is enrolled will be notified.
4. Should the issue not be resolved by the Dean, either the student or instructor may appeal in writing within ten (10) days of the action taken in Step 3 to the Budget and Academic Policy Committee who shall refer the matter to the University Academic Appeals Board who ~~for resolution~~ **decide if an appeal hearing is justified. If the University Academic Appeals Board decides a hearing is justified, a hearing will be set up.** ~~The hearing panel~~ **University Academic Appeals Board** has the right to seek additional documentation if necessary. ~~The University Academic Appeals Board~~ **University Academic Appeals Board** has ~~twenty (20)~~ **thirty (30)** days to convene the members of the ~~panel~~ **Hearing Panel** to hear the appeal **(once the requested documentation is provided by the appellant student)** and ten (10) days after the hearing to make notification of the determination to the student and instructor. **Since many of these appeals occur at times when school is not in session it may not always be possible to meet the above conditions, but every effort will be made to hear appeals in a timely and reasonable manner.**
5. Should the student or the instructor be dissatisfied with the determination of the Academic Appeals Board then either party may file an appeal with the Provost and Senior Vice President for Academic Affairs within thirty (30) days from receipt of the decision of the Board. The Provost and Senior Vice President for Academic Affairs has ten (10) days to respond in writing to the appeal documentation of the student or instructor. The decision of the Provost and Senior Vice President for Academic Affairs shall be final. Those students in the College of Nursing and Health Professions dissatisfied with the determination should file an appeal within thirty (30) days to either the Provost and Senior Vice

President for Academic Affairs or the V.P. for Health Services. **The Marshall Community and Technical College will follow the same process, but final appeal is to the President of the Marshall Community and Technical College.**

B. Appeals for Academic Dishonesty:

(Only individual allegations of academic dishonesty may be appealed. If a previous offense was not appealed within the time limit, or was appealed unsuccessfully, then subsequent offenses will be counted as repeat offenses and additional sanctions will be levied by the Office of Academic Affairs as described in the section on "Sanctions" in this policy.)

1. In those cases where the instructor imposes a sanction pursuant to ~~part Section IV, A, "Academic Rights and Responsibilities,"~~ only, **of the section titled Academic Rights and Responsibilities of Students**, and does not refer the matter to the department chairperson for additional sanctions, the student may appeal the sanction in accordance with the procedures described in **part V. Academic Appeals (A) of the section titled Rights and Responsibilities of Students** ~~the Academic Appeal section (A) above.~~
2. In those cases where the matter is referred to the department chairperson for additional sanctions, this action must occur within thirty (30) days of the alleged offense. The chair shall bring together the student involved, and the faculty member, and/or other complainant within ten (10) days from the date of referral.
3. If the student denies guilt or disagrees with the sanction imposed, or if the faculty member, other complainant, or chairperson feels that the penalties are insufficient for the act complained of, the case shall be forwarded in writing by the chairperson to the student's Academic Dean within ten (10) days from the date of the meeting. The Academic Dean shall bring together the student, faculty member or other complainant, and the department chairperson to review the charges within ten (10) days from the date of referral. The Academic Dean may impose any sanction permitted by this policy.
4. Should the student, faculty member, or other complainant be dissatisfied with the determination of the Academic Dean, the case may be appealed in writing within ten (10) days of the Dean's written decision to the Budget and Academic Policy Committee, who shall refer the case to the University Academic Appeals Board ~~for resolution who decide if an appeal hearing is justified.~~ **If the University Academic Appeals Board decides a hearing is justified, a hearing will be set up. The University Academic Appeals Board has the right to seek additional documentation if necessary. The University Academic Appeals Board has thirty (30) days to convene the members of the Hearing Panel to hear the appeal (once the requested documentation is provided by the appellant student) and ten (10) days after the hearing to make notification of the determination to the student and instructor. Since many of these appeals occur at times when school is not in session it may not always be possible to meet the above conditions, but every effort will be made to hear appeals in a timely and reasonable manner.**
5. Should the student, faculty member, or other complainant be dissatisfied with the determination of the Academic Appeals Board, then he/she may file an appeal with the Provost and Senior Vice President for Academic Affairs within thirty (30) days from the receipt of the written decision of the Board. The decision of the Provost and Senior Vice President for Academic Affairs shall be final. **The Marshall Community and Technical College will follow the same process, but final appeal is to the President of the Marshall Community and Technical College.**

C. Appeals for Academic Deficiencies:

1. In those cases in which an undergraduate student has been denied admission to a program, has been or may be placed on academic probation or academic suspension for academic deficiencies, the following procedures are applicable:
  - a. The student is entitled to written notice; (1) of the nature of the deficiency or reason for denial of admission to a program; (2) of the methods, if any, by which the student may correct the deficiency, and; (3) of the penalty which may be imposed as a consequence of the deficiency.
  - b. The student shall be given the opportunity to meet with the person(s) who has judged his/her performance to be deficient, to discuss with this person(s) the information forming the basis of the judgment or opinion of his/her performance; to present information or evidence on his/her behalf; and to be accompanied at any such meeting by an advisor of his/her choice from the University (faculty, staff, or student). Such advisors may consult with, but may not speak on behalf of their advisees, or otherwise participate directly in the proceedings, unless given specific

permission to do so by the person conducting the meeting. The student is not entitled to an attorney in such meetings, and the formal rules of evidence are not applicable. The student must request such meeting in writing ten (10) days from receipt of the notice.

- c. If the student is dissatisfied with the outcome of the meeting outlined in (b) above, the student may appeal the judgment to the Provost and Senior Vice President for Academic Affairs within thirty (30) days after receipt of written notice of the judgment.
  - d. The decision of the Provost and Senior Vice President for Academic Affairs is final.
2. In those cases in which a student has been or may be dismissed from an undergraduate academic program, or has been or may be dismissed from the institution for academic deficiencies, the following procedures are applicable:
- a. The student is entitled to written notice; (1) of the nature of the deficiency; (2) of the methods, if any, by which the student may correct the deficiency, and; (3) of the penalty which may be imposed as a consequence of the deficiency.
  - b. The student shall be given the opportunity to meet with the person(s) who judged his/her performance to be deficient. The student must request such meeting in writing within ten (10) days from receipt of the notice. The student shall be given the opportunity to discuss with this person(s) the information forming the basis of the judgment or opinion of his/her performance, to present information or evidence on his/her behalf, and to be accompanied at any such meeting by an advisor of his/her choice from the University (faculty, staff, or student). Such advisor may consult with but may not speak on behalf of his/her advisee, or otherwise participate directly in the proceedings, unless given specific permission to do so by the person conducting the meeting. The student is not entitled to an attorney in such meetings, and the formal rules of evidence are not applicable.
  - c. If the student is dissatisfied with the outcome of the meeting outlined in (b) above, the student may file an appeal in writing with the Chair of the Budget and Academic Policy Committee. The Chair of the Budget and Academic Policy Committee will refer the matter to the **University Academic Appeals Board to determine whether the student has grounds for an appeal; who decide if an appeal hearing is justified. If the University Academic Appeals Board decides a hearing is justified, a hearing will be set up. The University Academic Appeals Board has the right to seek additional documentation if necessary. The University Academic Appeals Board has thirty (30) days to convene the members of the Hearing Panel to hear the appeal (once the requested documentation is provided by the appellant student) and ten (10) days after the hearing to make notification of the determination to the student and instructor.** If the student is denied an appeal, he/she may appeal this decision to the Provost and Senior Vice President for Academic Affairs. If the student is granted an appeal, the Chair will appoint a Hearing Panel. At least two (2) of the faculty and student members of the hearing panel will, if possible, be chosen from ~~board~~ **panel** members appointed from the constituent college or school involved. Since many of these appeals occur at times when school is not in session it may not always be possible to meet the above condition, but every effort will be made to hear appeals in a timely and reasonable manner. The student's appeal must be filed within ten (10) days after receipt of written notice of the decision outlined in (b) above.
  - d. If the student is dissatisfied with the decision of the Hearing Panel, the student may appeal the decision to the Provost and Senior Vice President for Academic Affairs within thirty (30) days after receipt of written notice of the decision.
  - e. The decision of the Provost/Senior Vice President for Academic Affairs is final. **The Marshall Community and Technical College will follow the same process, but final appeal is to the President of the Marshall Community and Technical College.**

## ~~VI~~ II. *Academic Appeals Board*

### A. Description and Jurisdiction:

The Academic Appeals Board is a permanent subcommittee of the Budget and Academic Policy Committee. It is **composed of experienced hearing officers and is established to hear all decide whether** appeals arising from the following **should result in a hearing:**

1. Instructor-imposed sanctions, including: lowering of final course grade, failure of course, or exclusion from further participation in the class.
2. Final course grades.
3. Sanctions imposed for academic dishonesty.
4. Dismissal from an academic program.
5. Dismissal from the University.
6. Such other cases as may be referred to the Board.

#### **B. Function:**

**The University Academic Appeals Board collectively determines whether:**

- a) **The prior steps of the appeal process have been completed.**
- b) **The claim (if substantiated) would result in the overturning of the academic sanction. This means that some policy may have been violated in the application of the sanction, arbitrariness or capriciousness may be a factor in the sanction, different standards may have been applied to the student or there may have been bad faith or ill will on the part of the instructor's applying of the sanction.**
- c) **Appropriate documentation of the claim needs to be provided in order to justify a hearing. It is the student's job to provide documentation for their claims. The Board may ask for additional documentation from either students or faculty in order to determine whether a hearing is justified.**

~~B. Composition of the Board~~

#### **III. Hearing Panel**

**The purpose of the Hearing Panel is to hear arguments, evaluate evidence, and reach a decision by voting in an Academic Hearing.**

~~A. The Academic Appeals Board~~ **Hearing Panel** shall be composed of faculty and student members chosen in the following manner:

##### 1. Faculty Members:

The Dean of each of the constituent colleges and schools of the university shall appoint five (5) faculty members from his/her unit to serve on the **panel board**. Such appointments will be made annually in the spring semester with the understanding that some of these faculty members will be available to hear appeals during the summer terms and the week before the beginning of Spring semester. Terms will run from May 15 to the following May 15.

##### 2. Student Members:

The President of Student Government shall appoint three (3) students from each of the constituent colleges and schools of the university.

##### 3. Hearing Officers:

The Budget and Academic Policy Committee will call for volunteers and appoint two Hearing Officers each spring. It is desirable but not required that the Hearing Officers have served on the Hearing Panel.

#### ~~C.~~ **B. Selection of Members for an Individual Hearing Panel**

An individual Hearing Panel shall be composed of two (2) faculty members, one (1) student member, and one (1) non-voting Hearing Officer. The members of the Hearing Panel shall be chosen randomly by the Chairperson of the Budget and Academic Policy Committee or his/her designee. In appeals arising from dismissal from an academic program, if possible, at least two (2) of the faculty and student members of the panel should be chosen from the **Panel Board** members appointed from the constituent college or school involved.

#### ~~VII.~~ **IV. Hearing Procedures**

It is the intent of these procedures to ensure that Marshall University students receive appropriate due process in academic matters. This includes fundamental fairness, just sanctions, and all rights in accordance with the belief that academic appeal hearings at an institution of higher education such as Marshall University should have an educational objective. Academic appeals, pursuant to these procedures, are informal and not adversarial in nature.

- A. The time and place of the hearing are is determined by the Hearing Officer. The hearing should be held within sixty (60) days of receiving the written request. Upon written request, the Hearing Officer may, at his/her discretion, grant a continuance to any party for good cause.
- B. The Hearing Officer will notify the appellee, appellant, and other appropriate parties in writing at least five (5) days prior to the hearing, of the date, time, and place of the hearing. A statement of the facts and evidence to be presented in support of the student's grounds for appeal will be provided to the appellee in appropriate cases.
- C. The appellant student and the appellee have the right to an advisor. Advisors must be members of the University community (faculty, staff, or student). Such advisors may consult with, but may not speak on behalf of their advisees or otherwise participate directly in the proceedings, unless they are given specific permission to do so by the Hearing Officer. ~~Attorneys are not permitted to appear on behalf of any appellant or appellee.~~
- D. The appellant student has the right to retain legal counsel for representation in certain cases when he/she are or will be dismissed from a program or from the University as a direct and immediate consequence of any academic sanction administered by the University. In these cases an attorney is allowed to fully represent and speak on behalf of the appellant student. Rules of evidence and other formal rules of courtroom procedure do not apply. The Hearing Officer may exercise authority over what is allowable and what is not relevant.**
- ~~D. E.~~ E. Prior to the scheduled hearing, the members of the **Board Panel** may convene in closed session to examine the content of the appeal, the specific issues to be considered, and all supporting documents.
- ~~E. F.~~ F. The student with his/her advisor, if any, will be called before the **Board Panel** and the Hearing Officer will then restate the nature of the appeal and the issues to be decided.
- ~~F. G.~~ G. The hearing shall be closed. All persons to be called as witnesses, other than the appellant, with his/her advisor, if any, and the appellee and his/her advisor, if any, will be excluded from the hearing room. Any person who remains in the room after the hearing has begun will be prohibited from appearing as a witness at the discretion of the Hearing Officer.
- ~~G. H.~~ H. Anyone disrupting the hearing may be excluded from the hearing room if, after due warning, he/she engages in conduct which substantially delays or disrupts the hearing, in which case the hearing shall continue and the **Board Panel** shall make a determination based on the evidence presented. If excluded, the person may be readmitted on the assurance of good behavior. Any person who refuses the **Board's Panel's** order to leave the hearing room may be subject to appropriate disciplinary action pursuant to Marshall University policy. When a student is ejected for disruptive behavior and does not have a recognized representative, the Hearing Officer will appoint one.
- ~~H. I.~~ I. Except as provided in ~~G K~~ and ~~K L~~ herein, all evidence must be presented in the presence of the student.
- ~~I. J.~~ J. The student or other parties involved may petition the Hearing Officer for a subpoena or a request for appropriate written information or documents.
- ~~J. K.~~ K. The student will be given the opportunity to testify and present evidence and witnesses on his/her own behalf and to discuss with, and question, those persons against whom the appeal is filed.
- ~~K. L.~~ L. The **Board Panel** may admit as evidence any testimony, written documents, or demonstrative evidence which it believes is relevant to a fair determination of the issues. Formal rules of evidence shall not be applicable in academic appeal hearings.
- ~~L. M.~~ M. If the student appellant or the appellee fails to appear at a hearing and fails to make advance explanation for such absence which is satisfactory to the **Board Panel**, or if the student appellant or the appellee leaves before the conclusion of the hearing without permission of the **Board Panel**, the hearing may continue and the **Board Panel** may make a determination on the evidence presented at the hearing, or the **Board Panel** may, at its discretion, dismiss the appeal.
- ~~M. N.~~ N. Upon completion of the testimony and presentation of evidence, all persons, except **Board Panel** members will be required to leave the room. The **Board Panel** will then meet in closed session to review the evidence presented. The **Board Panel** shall make its findings based upon a preponderance of evidence. The **Board Panel** shall reach its determination by a majority vote. The results shall be recorded in writing and filed with the Chairperson of the Budget and Academic Policy Committee and the Provost and Senior Vice President for Academic Affairs. If the **Board's Panel's** decision includes the

imposition of academic sanction, the sanction given and its duration must be specified for the record. A report of a dissenting opinion or opinions may be submitted to the Chairperson of the Budget and Academic Policy Committee and the Provost and Senior Vice President for Academic Affairs by any Hearing Officer.

~~N~~ **O.** The findings of the ~~Board Panel~~, and any sanction, shall be announced at the conclusion of the hearing. The student, faculty member, and the appropriate Academic Dean shall be notified in writing of the findings and any sanction at the conclusion of the hearing. A record of the hearing shall be prepared in the form of summary minutes and relevant attachments and will be provided to the student upon request.

~~O~~ **P.** The student, or any other person, may not tape the proceedings.

~~P~~ **Q.** In an appeal related to a final grade the ~~appeals board- panel~~ will complete the change of grade forms and submit that information to the Registrar, the faculty member, and the appropriate Academic Dean.

~~Q~~ **R.** Within thirty (30) days following receipt of the ~~Board's Panel's~~ decision, the student may file an appeal with the Provost and Senior Vice President for Academic Affairs who shall review the facts of the case and take such action as deemed appropriate under all the circumstances. The ~~Board's Panel's~~ findings and sanction, if any, may be affirmed, modified, or remanded to the original Hearing ~~Board Panel~~ for further action as deemed appropriate by the Provost. A written brief stating grounds for the appeal should be presented by the student to the Provost with the appeal. The scope of review shall be limited to the following:

1. Procedural errors.
2. Evidence not available at the time of the hearing.
3. Insufficient evidence to support the findings of the **Panel or of the Academic Appeals Board**.
4. Misinterpretation of University policies and regulations by **the Panel or by the Academic Appeals Board**.
5. A sanction disproportionate to the offense.
6. Lack of jurisdiction.

~~R~~ **S.** The decision of the Provost and Senior Vice President for Academic Affairs is final. The student, the faculty member, the appropriate Academic Dean, and the Registrar shall be notified in writing of the Provost's decision.

*Approved by the Academic Standards and Curricular Review Committee, October 28, 1988*

*Approved by the Budget and Academic Policy Committee, October 21, 2004*

*Revised by Faculty Senate: March 19, 2002, February 27, 2003, and November 18, 2004*