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

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**BUDGET AND ACADEMIC POLICY COMMITTEE  
RECOMMENDATION**

**SR-04-05-(10) 67R 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 students' rights are protected for: 1. Procedural due process (notification of charges and right to appeal) and notice (of the rules by which **people** 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 students' rights to procedural due process and to fairness.

**In addition, the revision attempts to synchronize the Academic Appeal sections in the Graduate, the Undergraduate, and the Marshall Community and Technical College Catalogs.**

**FACULTY SENATE ASSISTANT CHAIR:**

APPROVED BY SENATE: Cheryl A Brown DATE: 4/1/05

DISAPPROVED BY SENATE: \_\_\_\_\_ DATE: \_\_\_\_\_

**UNIVERSITY PRESIDENT:**

APPROVED: [Signature] DATE: 4/8/05

DISAPPROVED: \_\_\_\_\_ DATE: \_\_\_\_\_

**COMMENTS:** \_\_\_\_\_

## 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, only students who 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 may, at ~~his or her~~ **their** 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 or **division head**.
2. If the procedure in Step 1 does not have a mutually satisfactory result, the student may appeal in writing to the department chairperson or **division head** 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 or **division head** 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 **division head** (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. **If the course is offered in the Marshall Community and Technical College, the appeal is to the Associate Dean of the Marshall Community & Technical College. This person** is to respond to the student or instructor in writing within ten (10) days after the student has submitted the appeal documentation **and will attempt to achieve a mutually satisfactory resolution**. If the **person named above** does not respond to the student in the given time frame, the appeal process continues to the next level. The **Dean** of the college in which the student is enrolled will be notified.
4. Should the issue not be resolved by the **Dean of the college within which the course is offered or the Associate Dean of the Marshall Community & Technical College**, 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~~ **which** shall refer the matter to the University Academic Appeals Board which ~~decides~~ **determines** if an appeal hearing is justified. If the University Academic Appeals Board ~~decides~~ **determines** a hearing is justified, the Board will schedule the hearing. 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. **It may not always be possible to meet the above conditions because many of these appeals occur at times when school is not in session. However every effort will be made to schedule appeal hearings in a timely and reasonable manner. 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 or, **for students in the Marshall Community and Technical College to the Dean of Academic Affairs of the Marshall Community & Technical College**, within thirty (30) days from receipt of the decision of the Board. **This person** 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 **or the Dean of Academic Affairs of the Marshall Community & Technical College** shall be final. Those students **or faculty** 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 Dean of Academic Affairs of the Marshall Community & Technical College~~ or the V.P. for Health Sciences 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 IV, A, only, of the section titled Academic Rights and Responsibilities of Students, and does not refer the matter to the department chairperson **or division head** 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.
2. In those cases where the matter is referred to the department chairperson **or division head** for additional sanctions, this action must occur within thirty (30) days of the alleged offense. The chairperson **or division head** 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 **or division head feels thinks** that the penalties are insufficient for the act complained of, the case shall be forwarded in writing by the chairperson **or division head** to the student's Academic Dean **or, for students in the Marshall Community and Technical College to the Associate Dean of the Marshall Community & Technical College**, within ten (10) days from the date of the meeting. **This person** shall bring together the student, faculty member or other complainant, and the department chairperson **or division head** to review the charges within ten (10) days from the date of referral. The student's Academic Dean **or the Associate Dean of the Marshall Community & Technical College** may impose any sanction permitted by this policy.
4. Should the student, faculty member, or other complainant be dissatisfied with the determination of the student's Academic Dean **or, for students in the Marshall Community and Technical College, to the Associate Dean of the Marshall Community & Technical College**, the case may be appealed in writing within ten (10) days of the written decision to the Budget and Academic Policy Committee, who shall refer the case to the University Academic Appeals Board which ~~decides~~ **determines** if an appeal hearing is justified. If the University Academic Appeals Board ~~decides~~ **determines** a hearing is justified, the Board will schedule the hearing. 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. ~~It may not always be possible to meet the above conditions because many of these appeals occur at times when school is not in session. However every effort will be made to schedule appeal hearings in a timely and reasonable manner. 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 **or the Hearing Panel**, then he/she may file an appeal with the Provost and Senior Vice President for Academic Affairs **or, for students in the Marshall Community and Technical College, to the Dean of Academic Affairs of the Marshall Community & Technical College**, within thirty (30) days from the receipt of the written decision of the Board or Panel. Those students **or faculty** in the College of 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 Sciences.
6. The decision of the Provost and Senior Vice President for Academic Affairs **or the Dean of Academic Affairs of the Marshall Community & Technical College** 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 or, for **Marshall Community and Technical College students, to the Dean of Academic Affairs of the Marshall Community & Technical College**, within thirty (30) days after receipt of written notice of the judgment. **Those students or faculty in the College of 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 Sciences.**
  - d. The decision of the Provost and Senior Vice President for Academic Affairs or the **Dean of Academic Affairs of the Marshall Community & Technical College** 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 Chairperson of the Budget and Academic Policy Committee. The Chairperson of the Budget and Academic Policy Committee will refer the matter to the University Academic Appeals Board which **decides determines** if an appeal hearing is justified. If the University Academic Appeals Board **decides determines** a hearing is justified, the Board will schedule the hearing. 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 or, for **students in the Marshall Community and Technical College, to the Dean of Academic Affairs of the Marshall Community & Technical College**. If the student is granted an appeal, the Chairperson of the Academic Appeals Board will appoint a Hearing Panel. At least two (2) of the faculty and

student members of the ~~h~~Hearing ~~p~~Panel will, if possible, be chosen from the members of the Hearing Panel Pool board-panel members appointed from the constituent college or school involved. **It may not always be possible to meet the above conditions because many of these appeals occur at times when school is not in session. However every effort will be made to schedule appeal hearings in a timely and reasonable manner. 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.** 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, **faculty member or other complainant** is dissatisfied with the decision of the Hearing Panel, **he or she** ~~the student~~ may appeal the decision to the Provost and Senior Vice President for Academic Affairs **or, for students in the Marshall Community and Technical College, to the Dean of Academic Affairs of the Marshall Community & Technical College**, within thirty (30) days after receipt of written notice of the decision. **Those students or faculty in the College of 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 Sciences.**
- e. The decision of the Provost/Senior Vice President for Academic Affairs **or the Dean of Academic Affairs of the Marshall Community & Technical College** 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.~~

## 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 ~~h~~Hearing ~~e~~Officers and is established to ~~decide~~ **determine** 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~~ **decides** 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 have been 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 his/her claims. The Board may ask for additional documentation from either students or faculty in order to determine whether a hearing is justified.

## 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 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 or the **Associate Dean of the Marshall Community & Technical College** shall appoint five (5) faculty members from his/her unit to serve on the **Hearing Panel Pool** panel. 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 Association~~ **President** shall appoint three (3) students from each of the constituent colleges and schools of the University to serve on the **Hearing Panel Pool**.

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 a ~~Hearing pPanel the Hearing Panel~~.

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 ~~from the Hearing Panel Pool~~ by the Chairperson of the ~~Academic Appeals Board 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 ~~Hearing pPanel~~ should be chosen from the **Hearing Panel Pool** members appointed from the constituent college or school involved.

**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 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.
- D. The appellant student has the right, at his or her own discretion and expense, to retain legal counsel for representation only when he/she 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. 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 is authorized to decide** ~~exercise authority over~~ **what is allowable relevant** and what is not relevant.
- E. Prior to the scheduled hearing, the members of the **Hearing Panel** may convene in closed session to examine the content of the appeal, the specific issues to be considered, and all supporting documents.
- F. The student with his/her advisor, if any, will be called before the **Hearing Panel** and the Hearing Officer will then restate the nature of the appeal and the issues to be decided.
- 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 ~~may~~ be prohibited from appearing as a witness at the discretion of the Hearing Officer.

- 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 **Hearing 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 **Hearing Panel's** order to leave the hearing room may be subject to appropriate disciplinary action pursuant to Marshall University policy. When a student **appellant** is **excluded** ~~ejected~~ for disruptive behavior and does not have a recognized representative, the Hearing Officer will appoint one.
- I. Except as provided in H and ~~L~~ M herein, all evidence must be presented in the presence of the student.
- J. The student or other parties involved may petition the Hearing Officer for a subpoena or a request for appropriate written information or documents.
- 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. **Written evidence to be considered by the panelists should be received by the Hearing Officer at least five (5) business days prior to the hearing to be distributed to the panelists prior to the hearing. Exceptions to this five (5) day rule are at the discretion of the Hearing Officer, who may disallow long written documents or large numbers of documents from being introduced if the panelists will not have time to consider them fully.**
- L. The **Hearing 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.
- 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 **Hearing Panel**, or if the student appellant or the appellee leaves before the conclusion of the hearing without permission of the **Hearing Panel**, the hearing may continue and the **Hearing Panel** may make a determination on the evidence presented at the hearing, or the **Hearing Panel** may, at its discretion, dismiss the appeal.
- N. Upon completion of the testimony and presentation of evidence, all persons, except **Hearing Panel** members will be required to leave the room. The **Hearing Panel** will then meet in closed session to review the evidence presented. The **Hearing Panel** shall make its findings based upon a preponderance of evidence. The **Hearing 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 of Academic Affairs or, for cases in the Marshall Community and Technical College, with the Dean of Academic Affairs of the Marshall Community & Technical College.** If the **Hearing 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 **or, for cases in the Marshall Community and Technical College, to the Dean of Academic Affairs of the Marshall Community & Technical College,** by any Hearing Officer.
- O. The findings of the **Hearing Panel**, and any sanction, shall be announced at the conclusion of the hearing. The student, faculty member, and the appropriate Academic **Dean or Associate Dean of the Marshall Community & Technical College** 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 **by the Hearing Officer** in the form of summary minutes and relevant attachments and will be provided to the student upon request.
- P. No one may tape the proceedings.
- Q. In an appeal related to a final grade the **Hearing Officer** ~~appeals panel~~ will complete the **any necessary** change of grade forms and submit that information to the Registrar, the faculty member, and the appropriate Academic **Dean or, for cases in the Marshall Community and Technical College, to the Associate Dean of the Marshall Community & Technical College.**
- R. Within thirty (30) days following receipt of the **Hearing Panel's** decision, the student, **faculty member or other complainant** may file an appeal with the Provost and Senior Vice President for Academic Affairs **or, for cases in the Marshall Community and Technical College to the Dean of Academic Affairs of the Marshall Community &**

**Technical College** who shall review the facts of the case and take such action as deemed appropriate under all the circumstances. The Panel's findings and sanction, if any, may be affirmed, modified, or remanded to the original Hearing Panel for further action as deemed appropriate by ~~that person~~. A written brief stating grounds for the appeal should be presented by the student, faculty member or other complainant to the Provost and Senior Vice President of Academic Affairs or, for cases in the Marshall Community & Technical College, to the Dean of Academic Affairs of the Marshall Community & Technical College 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 **Hearing** Panel or of the Academic Appeals Board.
4. Misinterpretation of University policies and regulations by the **Hearing** Panel or by the Academic Appeals Board.
5. A sanction disproportionate to the offense.
6. Lack of jurisdiction.

**The Provost and Senior Vice President of Academic Affairs, or the Dean of Academic Affairs of the Marshall Community & Technical College, may affirm or modify the panel's findings and sanctions, if any, or remand the case to the Academic Appeals Board for further action.**

- S. The decision of the Provost and Senior Vice President for Academic Affairs or of the Dean of Academic Affairs of the Marshall Community & Technical College is final. **He/she will give written notification of the final decision to the student, the faculty member, the appropriate Academic Dean or the Associate Dean of the Marshall Community & Technical College, and as appropriate, the Registrar. shall be notified in writing of the Provost's decision. Those students or faculty in the College of 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 Sciences.**

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

*Approved by the Budget and Academic Policy Committee, October 21, 2004, **March 4, 2005***

*Revised by Faculty Senate: March 19, 2002, February 27, 2003, November 18, 2004, March 31, 2005*

This is not the original recommendation; these pages reflect the recommendation after revisions.

## **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, only students who 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 may, at their 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 or division head.
2. If the procedure in Step 1 does not have a mutually satisfactory result, the student may appeal in writing to the department chairperson or division head 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 or division head 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 division head (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. If the course is offered in the Marshall Community and Technical College, the appeal is to the Associate Dean of the Marshall Community & Technical College. This person is to respond to the student or instructor in writing within ten (10) days after the student has submitted the appeal documentation and will attempt to achieve a mutually satisfactory resolution. If the person named above does not respond to the student in the given time frame, the appeal process continues to the next level. The Dean of the college in which the student is enrolled will be notified.
4. Should the issue not be resolved by the Dean of the college within which the course is offered or the Associate Dean of the Marshall Community & Technical College, 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 which shall refer the matter to the University Academic Appeals Board which determines if an appeal hearing is justified. If the University Academic Appeals Board determines a hearing is justified, the Board will schedule the hearing. 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. It may not always be possible to meet the above conditions because many of these appeals occur at times when school is not in session. However every effort will be made to schedule appeal hearings 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 or, for students in the Marshall Community and Technical College to the Dean of Academic Affairs of the Marshall Community & Technical College, within thirty (30) days from receipt of the decision of the Board. This person has ten (10) days to respond in writing to the student or instructor. The decision of the Provost and Senior Vice President for Academic Affairs or the Dean of Academic Affairs of the Marshall Community & Technical College shall be final. Those students or faculty in

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the College of 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 Sciences.

#### 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 IV, A, only, of the section titled Academic Rights and Responsibilities of Students, and does not refer the matter to the department chairperson or division head 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.
2. In those cases where the matter is referred to the department chairperson or division head for additional sanctions, this action must occur within thirty (30) days of the alleged offense. The chairperson or division head 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 or division head thinks that the penalties are insufficient for the act complained of, the case shall be forwarded in writing by the chairperson or division head to the student's Academic Dean or, for students in the Marshall Community and Technical College to the Associate Dean of the Marshall Community & Technical College, within ten (10) days from the date of the meeting. This person shall bring together the student, faculty member or other complainant, and the department chairperson or division head to review the charges within ten (10) days from the date of referral. The student's Academic Dean or the Associate Dean of the Marshall Community & Technical College may impose any sanction permitted by this policy.
4. Should the student, faculty member, or other complainant be dissatisfied with the determination of the student's Academic Dean or, for students in the Marshall Community and Technical College, to the Associate Dean of the Marshall Community & Technical College, the case may be appealed in writing within ten (10) days of the written decision to the Budget and Academic Policy Committee, who shall refer the case to the University Academic Appeals Board which determines if an appeal hearing is justified. If the University Academic Appeals Board determines a hearing is justified, the Board will schedule the hearing. 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. It may not always be possible to meet the above conditions because many of these appeals occur at times when school is not in session. However every effort will be made to schedule appeal hearings 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 or the Hearing Panel, then he/she may file an appeal with the Provost and Senior Vice President for Academic Affairs or, for students in the Marshall Community and Technical College, to the Dean of Academic Affairs of the Marshall Community & Technical College, within thirty (30) days from the receipt of the written decision of the Board or Panel. Those students or faculty in the College of 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 Sciences.
6. The decision of the Provost and Senior Vice President for Academic Affairs or the Dean of Academic Affairs of the Marshall Community & Technical College shall be final.

#### 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

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- 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 or, for Marshall Community and Technical College students, to the Dean of Academic Affairs of the Marshall Community & Technical College, within thirty (30) days after receipt of written notice of the judgment. Those students or faculty in the College of 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 Sciences.
  - d. The decision of the Provost and Senior Vice President for Academic Affairs or the Dean of Academic Affairs of the Marshall Community & Technical College 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 Chairperson of the Budget and Academic Policy Committee. The Chairperson of the Budget and Academic Policy Committee will refer the matter to the University Academic Appeals Board which determines if an appeal hearing is justified. If the University Academic Appeals Board determines a hearing is justified, the Board will schedule the hearing. 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 or, for students in the Marshall Community and Technical College, to the Dean of Academic Affairs of the Marshall Community & Technical College. If the student is granted an appeal, the Chairperson of the Academic Appeals Board 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 the members of the Hearing Panel Pool appointed from the constituent college or school involved. It may not always be possible to meet the above conditions because many of these appeals occur at times when school is not in session. However every effort will be made to schedule appeal hearings 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, faculty member or other complainant is dissatisfied with the decision of the Hearing Panel, he or she may appeal the decision to the Provost and Senior Vice President for Academic Affairs or, for students in the Marshall Community and Technical College, to the Dean of Academic Affairs of the Marshall Community &

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Technical College, within thirty (30) days after receipt of written notice of the decision. Those students or faculty in the College of 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 Sciences.

- e. The decision of the Provost/Senior Vice President for Academic Affairs or the Dean of Academic Affairs of the Marshall Community & Technical College is final.

## **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 determine 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 decides 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 have been 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 his/her claims. The Board may ask for additional documentation from either students or faculty in order to determine whether a hearing is justified.

## **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 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 or the Associate Dean of the Marshall Community & Technical College shall appoint five (5) faculty members from his/her unit to serve on the Hearing Panel Pool. 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 Student Government Association President shall appoint three (3) students from each of the constituent colleges and schools of the University to serve on the Hearing Panel Pool.

#### **3. Hearing Officers:**

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

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#### 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 from the Hearing Panel Pool by the Chairperson of the Academic Appeals Board 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 Hearing Panel should be chosen from the Hearing Panel Pool members appointed from the constituent college or school involved.

#### 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 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.
- D. The appellant student has the right, at his or her own discretion and expense, to retain legal counsel for representation only when he/she 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. 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 is authorized to decide what is relevant and what is not relevant.
- E. Prior to the scheduled hearing, the members of the Hearing Panel may convene in closed session to examine the content of the appeal, the specific issues to be considered, and all supporting documents.
- F. The student with his/her advisor, if any, will be called before the Hearing Panel and the Hearing Officer will then restate the nature of the appeal and the issues to be decided.
- 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 may be prohibited from appearing as a witness at the discretion of the Hearing Officer.
- 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 Hearing 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 Hearing Panel's order to leave the hearing room may be subject to appropriate disciplinary action pursuant to Marshall University policy. When a student appellant is excluded for disruptive behavior and does not have a recognized representative, the Hearing Officer will appoint one.
- I. Except as provided in H and M herein, all evidence must be presented in the presence of the student.
- J. The student or other parties involved may petition the Hearing Officer for a subpoena or a request for appropriate written information or documents.
- 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. Written evidence to be considered by the

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panelists should be received by the Hearing Officer at least five (5) business days prior to the hearing to be distributed to the panelists prior to the hearing. Exceptions to this five (5) day rule are at the discretion of the Hearing Officer, who may disallow long written documents or large numbers of documents from being introduced if the panelists will not have time to consider them fully.

- L. The Hearing 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.
- 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 Hearing Panel, or if the student appellant or the appellee leaves before the conclusion of the hearing without permission of the Hearing Panel, the hearing may continue and the Hearing Panel may make a determination on the evidence presented at the hearing, or the Hearing Panel may, at its discretion, dismiss the appeal.
- N. Upon completion of the testimony and presentation of evidence, all persons, except Hearing Panel members will be required to leave the room. The Hearing Panel will then meet in closed session to review the evidence presented. The Hearing Panel shall make its findings based upon a preponderance of evidence. The Hearing 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 of Academic Affairs or, for cases in the Marshall Community and Technical College, with the Dean of Academic Affairs of the Marshall Community & Technical College. If the Hearing 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 or, for cases in the Marshall Community and Technical College, to the Dean of Academic Affairs of the Marshall Community & Technical College, by any Hearing Officer.
- O. The findings of the Hearing Panel, and any sanction, shall be announced at the conclusion of the hearing. The student, faculty member, and the appropriate Academic Dean or Associate Dean of the Marshall Community & Technical College 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 by the Hearing Officer in the form of summary minutes and relevant attachments and will be provided to the student upon request.
- P. No one may tape the proceedings.
- Q. In an appeal related to a final grade the Hearing Officer will complete any necessary change of grade forms and submit that information to the Registrar, the faculty member, and the appropriate Academic Dean or, for cases in the Marshall Community and Technical College, to the Associate Dean of the Marshall Community & Technical College.
- R. Within thirty (30) days following receipt of the Hearing Panel's decision, the student, faculty member or other complainant may file an appeal with the Provost and Senior Vice President for Academic Affairs or, for cases in the Marshall Community and Technical College to the Dean of Academic Affairs of the Marshall Community & Technical College. A written brief stating grounds for the appeal should be presented by the student, faculty member or other complainant to the Provost and Senior Vice President of Academic Affairs or, for cases in the Marshall Community & Technical College, to the Dean of Academic Affairs of the Marshall Community & Technical College. 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 Hearing Panel or of the Academic Appeals Board.
  - 4. Misinterpretation of University policies and regulations by the Hearing Panel or by the Academic Appeals Board.
  - 5. A sanction disproportionate to the offense.
  - 6. Lack of jurisdiction.

The Provost and Senior Vice President of Academic Affairs, or the Dean of Academic Affairs of the Marshall Community & Technical College, may affirm or modify the panel's findings and sanctions, if any, or remand the case to the Academic Appeals Board for further action.

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- S. The decision of the Provost and Senior Vice President for Academic Affairs or of the Dean of Academic Affairs of the Marshall Community & Technical College is final. He/she will give written notification of the final decision to the student, the faculty member, the appropriate Academic Dean or the Associate Dean of the Marshall Community & Technical College, and as appropriate, the Registrar. Those students or faculty in the College of 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 Sciences.

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