

Administrative Regulation — Due Process (Interim)

I. The University Must Provide Due Process

Consistent with its constitutional obligations, before imposing a disciplinary action against a student, student organization or employee, the University will provide due process. In all circumstances, the accused student, student organization or employee is presumed innocent, and the University has the burden of proof.

However, the level of due process provided will depend upon the circumstances as detailed below.

A. When a Formal Hearing Is Required

The University will provide a formal hearing, using the procedures detailed in this *Administrative Regulation*, whenever a student, student organization or employee is facing a significant suspension, expulsion of a student or other significant violation of the *Academic Code*, cancelation of a contract to live in University-controlled housing, revocation of status as a registered student organization, termination of faculty appointment before the expiration of the appointment, deprivation of a constitutionally protected property interest or where explicitly required by state or federal law.

When the formal hearing results in a finding of responsibility for a student, student organization or employee, the student, student organization or employee may appeal either the finding of responsibility or the sanction or both. If there is finding of no responsibility, then the University may not appeal. In some instances involving violations of *Administrative Regulation — Equal Dignity*, federal law requires that the Complaining Witness will also have the right to appeal.

B. Instances When a Formal Hearing is not Required

In instances when a formal hearing is not required by this regulation, the University will provide due process in the form of notice of the allegations to the student, student organization or employee and an opportunity for that student, student organization or employee to be heard before a neutral party. The exact procedures for this notice and opportunity to be heard will vary depending upon context.

C. Investigation Before Determining Whether a Formal Hearing is Required

Prior to determining whether a formal hearing is required, the University will conduct an investigation using the procedures established by the appropriate offices. The identification of the appropriate codes and/or policies will be context specific. In some instances, the University's investigation may involve multiple University

offices, external entities or individuals retained by the institution. Except where an appeal is required by federal regulation, the decision of the University regarding whether a formal hearing is required is final.

D. Interim Suspension During Investigation and Ultimate Resolution

1. Circumstances Justifying Interim Suspension

When a student, student organization or employee is accused of a violation of any regulation or policy, and when there is a determination by the appropriate administrator that the allegations, if true, make the student, student organization or employee a threat to the safety and well-being of others, then an appropriate administrator will suspend the student, student organization or employee pending investigation and ultimate resolution. Suspensions of employees will be with pay.

The appropriate administrators are the dean of students (students or student organizations), the Provost (faculty employees), the Executive Vice President for Finance and Administration (staff employees) or, in those instances where federal regulations govern the administration of federal discrimination law, the executive director of the Office of Equal Opportunity (students and employees). The appropriate administrators periodically will reassess whether continuing the interim suspension is appropriate.

2. Appeal of Interim Suspension By a Student or Student Organization

As required by state law, if a student or student organization receives an interim suspension from the dean of students or the executive director of the Office of Equal Opportunity, they may appeal to the Vice President for Student Success.¹

II. Hearing and Appeal Procedures

A. Applicability of Hearing and Appeal Procedures

These hearing and appeal procedures apply whenever a formal hearing is required for an alleged violation of any of the following:

- *Student Codes*
- *Academic Code*
- *Administrative Regulation — Equal Dignity*
- *Administrative Regulation — Administration of Research Activities*
- *Administrative Regulation — Employee Code (Faculty)*

- *Administrative Regulation — Employee Code (Staff)*

B. Decision-Makers in Hearings and Appeals

Although all hearings and appeals will utilize similar procedures, the hearing/appeal boards, who are the decision-makers in each hearing and appeal, will vary depending upon context.

C. Establishment of Hearing/Appeal Boards

The University establishes a hearing/appeal board and designates responsible cabinet members to appoint and oversee as follows:

- *Student Codes* (Vice President for Student Success)
- *Academic Code* (Provost)
- Equal Dignity (Executive Vice President for Finance and Administration)
- Research Misconduct (Vice President for Research)
- Employee Code — Faculty (Provost)
- Employee Code — Staff (Executive Vice President for Finance and Administration)

D. Composition of Hearing Boards, Hearing Panels and Appeal Panels

1. Appointment of Hearing/Appeal Boards

The cabinet members responsible for each hearing/appeal board will appoint at least 15 or more individuals to serve on hearing/appeal boards. In making appointments, the cabinet members should consult with the Faculty Senate, Staff Senate or Student Government Association, as appropriate. Members will serve one-year terms and may be reappointed for up to two (2) additional terms. The responsible cabinet members will ensure that all hearing board members are trained for their service.

2. Selection of Hearing Panels

For each hearing, three (3) members of the hearing/appeal board will be randomly chosen to serve as the hearing panel for that particular hearing. Panel members may serve on only one hearing or appeal panel at a time.

In the event a hearing panel member cannot serve for any reason (e.g., a conflict of interest), a replacement member of the hearing board will be randomly selected.

After serving on the hearing panel for a particular hearing, the hearing/appeals board member is eligible to be randomly selected for future hearing panel or a future appeals panel in a different case.

3. Selection of Appeal Panel

For each appeal from a decision of the hearing panel, three (3) members of the hearing/appeal board will be randomly chosen to serve as the appeal panel for that hearing. Individuals who served on the hearing panel are ineligible to serve on the appeal panel. Panel members may serve on only one hearing or appeal panel at a time.

In the event an appeal panel member cannot serve for any reason (e.g., a conflict of interest), a replacement member of the hearing board will be randomly selected.

After serving on the appeal panel for a particular hearing, the hearing/appeals board member is eligible to be randomly selected for future hearing panel or a future appeals panel in a different case.

4. Conflicts of Interest

Any member of a hearing/appeals panel who has a conflict of interest must immediately recuse themselves by notifying the respective hearing clerk/officer. Conflicts of interest include, but are not limited to, personal knowledge of the facts and circumstances of the allegations or having a familial, personal, faculty/student or professional relationship with the respondent.

If the University or the respondent believes a hearing/appeals panel member has a conflict of interest, the party may file a formal request for recusal. If the hearing/appeals panel member refuses to recuse, the party requesting recusal may submit the request to the general counsel who will make the final decision.

In the event a hearing/appeals panel member recuses for any reason, the respective hearing/appeals officer will randomly select a replacement.

E. Establishment of Hearing and Appeals Policies

Because of subtle differences in the statutory and regulatory requirements concerning due process in different areas of the University, the responsible cabinet member for each area will adopt policies detailing how hearing and appeals will be conducted in that area. Due process hearing and appeals policies will be adopted in the following areas:

- *Due Process — Student Codes* (Vice President for Student Success)
- *Due Process — Academic Code* (Provost)
- *Due Process — Equal Dignity* (Executive Vice President for Finance and Administration)
- *Due Process — Research Misconduct* (Vice President for Research)
- *Due Process — Employee Code (Faculty)* (Provost)
- *Due Process — Employee Code (Staff)* (Executive Vice President for Finance and Administration)

F. Termination Proceedings Involving the Board of Trustees

In those instances when only the Board of Trustees may terminate the employee, the employee will still be given a hearing and an appeal through the appropriate process. However, instead of being final, the decision of the appellate panel is only advisory to the President. The President will evaluate all aspects of the matter to determine whether to submit a termination recommendation to the Board of Trustees.

Before making this decision, the President shall consult with the Faculty Senate Chair, the Provost, the faculty employee's dean and such other faculty members as the President deems appropriate. The President shall also ask the faculty employee to provide written reasons as to why termination should not be pursued.

If the President, in their sole discretion, decides not to pursue termination, a lesser sanction will be imposed such as a suspension without pay, a permanent reduction in salary or other appropriate sanction.

If the President, in their sole discretion, decides to pursue termination, the Board of Trustees will conduct the proceedings according to the Kentucky Revised Statutes.²

¹ [KRS 164.370](#).

² [KRS 164.230](#).