

Due Process — Academic Code

This policy implements and is consistent with the requirements set out in *Administrative Regulation — Due Process*. In addition, these procedures should be read in conjunction with the academic code.

I. Formal Hearings

A. Hearing Roles and Responsibilities

1. Hearing Clerk

The Provost will appoint a hearing clerk who is responsible for scheduling the hearing, securing the location, ensuring the availability of the hearing panel and hearing officer and all other logistics. The hearing clerk will schedule a University-approved hearing officer.

2. Hearing Officer

The hearing officer will be drawn from a pool of University-approved hearing officers. The hearing officer will be a member in good standing of the Kentucky Bar Association. The hearing officer will preside over the hearing, instruct the hearing panel on legal issues and make decisions as to the admissibility of evidence. However, the hearing panel will be the ultimate decision-maker as to responsibility for a violation.

3. Hearing Panel

As set out in *Administrative Regulation — Due Process*, the Provost will appoint a hearing/appeals board of at least 15 employees. From this board, there will be a randomly selected three (3)-person hearing panel and if an appeal, a randomly selected three (3)-person appeal panel.

B. Pre-Hearing Procedure

1. Notice of Charges

When a formal hearing is required, the University will provide a statement of charges to the accused student (“respondent”). The statement of charges will detail the circumstances of the alleged violation, including the final investigative report and any probable cause determination. The notice also will provide a hearing date that is at least 10 business days after the notice.

2. Access to Evidence

No later than seven (7) business days prior to a scheduled hearing, both the University and the respondent will have access to all inculpatory and exculpatory evidence.

3. Submission of Information

No later than five (5) business days prior to a scheduled hearing, the University and the respondent must submit the following to the Provost: (a) challenges to any hearing panel member; (b) any information they wish to present at the hearing; (c) the name(s) of their attorney(s) or advisor(s); and (d) a list of possible witnesses and the subject(s) on which they are expected to testify. Character witnesses are not permitted.

Upon receipt of information from all participating parties, the hearing officer will review the information submitted to eliminate any redundant, irrelevant or prejudicial information.

4. Request for Postponement

At any time prior to a scheduled hearing, the University or the respondent may request to postpone the hearing. The hearing officer may accept or deny the request after considering the nature of the request and the incident at issue. The hearing officer's decision is final and may not be appealed.

5. Pre-Hearing Disclosures

No later than three (3) business days prior to a scheduled hearing, the University and the respondent will receive a copy of the following: (a) a list of potential witnesses; (b) preliminary questions submitted by parties; and (c) any other related information. These disclosures will be provided by the Provost.

6. Pre-Hearing Materials for the Hearing Panel

No later than three (3) business days prior to a scheduled hearing, the hearing panel will receive a copy of the following: (a) information about the parties; (b) the final investigative report including any appendices; (c) a list of potential witnesses; (d) the charged policy violations; (e) the date and location of the charged violation; and (f) any other related information. These disclosures will be provided by the Provost.

C. Conduct of Hearings

1. Burden of Proof

The respondent is presumed not responsible and is not responsible for providing a defense. The University has the burden of proving, by preponderance of the evidence, that the respondent committed the violation.

The University will present its case through the general counsel or attorneys under the direction and control of the general counsel.

2. Right to Counsel

The respondent has the right to legal counsel of their choice at their own expense.

3. Right to Advisors

The respondent has the right to up to two (2) non-attorney advisors of their choice. An advisor may not be a witness or respondent in the same case. The advisors may communicate privately with the individuals they are supporting but may not question witnesses or offer oral arguments during the hearing. Any advisor in violation of this policy will be dismissed from the hearing.

4. No Obligation to Present a Defense

Because the respondent is presumed not responsible and the burden of proof is on the University, the respondent is not required to present a defense.

5. Witnesses

All parties to the matter may call witnesses and may cross-examine witnesses offered by the other parties. Witnesses other than the respondent will be excluded from the hearing except for the period of their own testimony.

Parties are responsible for arranging the attendance of witnesses. The Provost will advise all potential witnesses of their right to be free from retaliation.

6. Evidence

The University and the respondent may present evidence. The Kentucky Rules of Evidence will govern the admission of evidence, but the hearing officer has the discretion to allow hearsay evidence.

7. Right Against Self-Incrimination

Any witness, including the respondent, may refuse to appear and/or exercise the right against self-incrimination. The hearing panel may not draw an inference due to a witness' non-participation or refusal to answer questions.

8. Instructions to the Hearing Panel

At the onset and conclusion of the hearing, the hearing officer will instruct the hearing panel as to (a) the presumption of non-responsibility; (b) standard of evidence required; and (c) any other matter the hearing officer deems necessary for the hearing panel's determination.

9. Record of the Hearing

The Provost will arrange for a video recording and/or transcript of the hearing.

D. Formal Hearing Decisions

1. Determination of Responsibility

The hearing panel will determine whether the respondent is responsible for a violation. Any finding of responsibility must be unanimous. No member of the hearing panel may abstain.

2. Post-Hearing Recommendations

If the hearing panel reaches a responsible finding, or the accused accepts responsibility prior to the hearing, the hearing panel will convene a supplemental proceeding to determine a recommendation for the sanction(s). The respondent's past violations of University policy may be considered at this time.

3. Decision of the Hearing Panel

The hearing panel will issue a written decision to the parties explaining its finding and accompanying rationale and recommended sanctions. The hearing panel may recommend any sanction up to and including expulsion.

4. Imposition of Sanctions

While the hearing panel's recommendation provides guidance, sanctions will be determined and imposed by the Provost.

The Provost may impose any sanction up to and including expulsion. Although the Provost may impose a greater or lesser sanction, the Provost cannot overturn a finding of responsibility.

II. Appeals

A. Eligibility for Filing an Appeal

These appeal procedures apply whenever a formal hearing has reached a decision for an alleged violation of Academic Code.

B. Grounds for Appeal

Any respondent who has been found responsible by a hearing panel may appeal either the finding of responsibility, the sanction imposed or both.

The University may not appeal.

C. The Notice of Appeal

A respondent may appeal by filing a notice of appeal with the Academic Ombud within seven (7) business days of the decision determining the sanction.

The notice must state (a) the grounds of the appeal, and (b) whether the respondent is appealing the finding of responsibility, the sanction imposed or both. Appeals not filed in a timely manner will not be accepted or considered.

D. Appeal Record

Upon receipt of a notice of appeal, the Academic Ombud will prepare the appeal record. The appeal record consists of the following:

- Pre-hearing materials for the hearing panel.
- The hearing officer's pre-hearing written rulings.
- The hearing panel's written decision and any sanction recommendation.
- The determination and imposition of sanction from the Provost, if any.
- A transcript of the hearing.
- Any other materials admitted into evidence during the hearing.

Upon completion of the appeal record, the Academic Ombud will certify the record is complete and will send a copy to all parties.

E. Appeal Clerk

The Academic Ombud will serve as the appeal clerk and will have responsibility for empaneling the appeals panel, receiving the briefs, scheduling oral arguments, if the appeals panel wishes, and distributing decisions.

F. Briefs

1. Respondent's Brief

When the respondent is challenging a finding of responsibility, sanction or both, the respondent's brief is due 10 business days after the Provost certifies the record is complete.

The respondent's brief must not exceed 10 pages, double-spaced, with 12-point type. The respondent's brief will be provided to the University for response.

2. University's Brief

The University's brief is due 10 business days after the brief of the respondent.

The University's brief must not exceed 10 pages, double-spaced, with 12-point type.

3. Reply Brief of the Respondent

The respondent may file a reply brief within 10 business days after the University's brief.

The reply brief must not exceed five (5) pages, double-spaced, with 12-point type.

4. Modification to Deadline and Page Limits

Upon request of any party, the respective appeals panel may extend the time for filing a brief and/or the page limits.

G. Appeal Decisions

1. Decision by the Appeals Panel

After reviewing all briefs and the appeal record, the respective appeals panel will make a written decision. The decision must be supported by a majority of the respective appeals panel. No member of the appeals panel may abstain.

The decision of the appeals panel is final.

2. Standard of Review

In reviewing the decision of the hearing panel, findings of fact are reviewed under the clearly erroneous standard and conclusions of law are reviewed de novo (reviewing without any deference to the hearing panel).

3. Decision Concerning Responsibility

With respect to the issue of responsibility, the appeals panel may affirm, reverse or reverse and remand for further proceedings.

4. Decision Concerning Sanction

As to the sanction, the respective appeals panel may affirm or impose a lesser sanction. The appeals panel may not increase the sanction.

III. Honor Codes

Where an approved college or program-specific honor code governs academic integrity violations, those procedures shall apply. All honor codes must be approved by the Office of the Provost and must include due process protections consistent with University policy.

If the honor code is not student-governed, the respondent may contest the finding by a due process hearing and appeal. Should the honor code be student-governed, the respondent may appeal to the appeals panel.

A verbatim record of all honor code proceedings must be maintained to support appellate review. Suspension, dismissal or expulsion may only be imposed with the dean's recommendation and the Provost's approval.

In the case where an approved honor code includes both academic and behavioral violations, behavioral violations in the honor code will follow the *Due Process — Student Codes*.