

**Recommendation:** That the University Senate endorse for submission to the Board of Trustees the indicated amendment to Governing Regulation XI (Attachment 1)

**Brief Background:** From 1970 to 2005, Governing Regulation XI prescribed that the **nonacademic** relationship of students to the University is controlled by Part I of the Code of Student Conduct, and that the **academic** relationship of students to the University is controlled by the University (Faculty) Senate Rules (Attachment 2). The University Senate Rules established academic policies and procedures within which the University Appeals Board (UAB) would hear, determine and render sanction/remedies on issues of academic offense and student academic rights. In parallel, a President's Administrative Regulation described the role of the University Appeals Board as an "appellate" body (Attachment 2a).

In 2005, there was a **nonacademic** issue of contest of the SGA election of a new SGA President, in which the UAB became involved, to the protest of some parties. The parties went to court, and the **only** issue the court had with the University's regulations about the UAB was that the regulations did not state that the UAB has a role to be involved in SGA elections (Attachment 3).

Specifically in response to the issue of the SGA election and UAB involvement, the University Provost then charged an ad hoc committee to draft a revision to GR XI to make clear what role the UAB would have in the future in regards to the SGA election and other nonacademic matters.

The committee's draft changes to GR XI were presented to the Senate Council at its Jan 9, 2006 meeting. Attending the meeting were three members of the ad hoc committee that drafted the changes to GR XI (the Provost's liaison to the Senate Council Assistant Provost Richard Greissman, Associate General Counsel Marcy Deaton, and then/current UAB Chair Joe Fink). Greissman and Deaton in good faith **expressly assured** the Senate Council, and Fink agreed, that the drafted changes to GR XI did **not** change the University Senate's **academic** control over the UAB. For example, the new wording about "original jurisdiction" was described to the Senate Council to be about the UAB being able to conduct hearings for 'new fact-finding' (Attachment 4). **On the basis** of these representations and assurances made to the Senate Council by the Provost's representative, by the UK Legal Office and by then/current UAB Chair, the Senate Council endorsed the proposed changes.

Further, when the draft GR XI was submitted to the Board of Trustees, it was **expressly described** to the Board itself that problem the draft changes were addressing were the nonacademic relationships of students to the University and to the UAB (Attachment 5).

However, **in direct contradiction** to what the Senate Council had been assured in 2006, the new UK General Counsel Bill Thro (arrived fall 2012) has just issued (April 2, 2014) an official opinion that the 2006 changes to GR XI have the effect ***to substantively remove the UAB from the controlling academic policy architecture of the University Senate Rules***. In his opinion, the UAB is not bound by limitations (upper or lower) that the Senate has established for academic offenses of cheating and plagiarism. In addition, he opines that the UAB is no longer bound by the Senate Rules that place student grades under the "good faith judgment" of the course instructor (Attachment 6). The University's official Sept 2012 [Certification Report](#) to SACS for our institution's accreditation represented that "*Policies on academic offenses (cheating and plagiarism) are clearly defined in the Senate Rules and are reproduced in Student Rights and Responsibilities*" and provided a link to the very [Senate Rules](#) that the General Counsel states do not control the UAB.

The Senate Rules and Elections Committee (SREC) is **extremely alarmed** that the University (Faculty) Senate has apparently lost control of **academic policies** on student academic offense and ultimate determination of student grades. The SREC recently met with Richard Greissman and Marcy Deaton and discussed what revision in GR XI would be needed to restore the University Senate's control over the UAB to the nature of **academic control** that the University Senate possessed from 1970 until 2005. The needed revisions are attached here (Attachment 1) and the SREC recommends the University Senate endorse for submission to the Board of Trustees the indicated revisions.



UNIVERSITY OF  
**KENTUCKY**  
Regulations

**Governing Regulation, Part XI**

Responsible Office: Board of Trustees

Date Effective: 3/7/2006

Supersedes Version: 6/14/2005

**DRAFT**

## Student Affairs

### Major Topics

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[Student-University Relationships](#)[The University Appeals Board - Jurisdiction](#)[Composition of the University Appeals Board](#)[Appointments to the University Appeals Board](#)[References and Related Materials](#)

### A. Student Government Association

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The University of Kentucky Student Government Association is recognized by the Board of Trustees, administration, the Staff Senate and the University Senate as the official representative of the student body in University matters to ensure a maximum of self-government and to foster mutual respect, collaboration and cooperation between students and the faculty, staff and administration. It shall develop rules for its composition and procedures, and provide services to the students, staff, faculty, and administration of the University. These rules shall be consistent with the vision, mission and values of the University and shall be governed by the University's written policies and procedures, including those prescribed in the *Governing Regulations*, *Administrative Regulations* and *University Senate Rules*. Copies of the Student Government Association rules and approved changes shall be provided to all members of the student body of the University, the Secretary of the Staff Senate, the Secretary of the University Senate, Vice President for Student Affairs, the President, and the Secretary of the Board of Trustees.

The President of the Student Government Association shall be considered to be the President of the student body of the University as specified in KRS 164.131.

The Student Government Association may have additional responsibilities delegated to it by the President or the Office of the Vice President for Student Affairs. The Vice President for Student Affairs shall have administrative oversight of the Student Government Association in matters pertaining to the expenditure of university funds. The Vice President for Student Affairs shall also ensure that any action taken by the Student Government Association is consistent with University written policies and procedures, including those prescribed in the *Governing Regulations*, *Administrative Regulations* and *University Senate Rules*. An appeal of a decision of the Vice President for Student Affairs in any of the above matters may be made to the Provost. The Vice President for Student Affairs shall assign a university advisor to the Student Government Association, whose duties shall be to counsel and advise the organization and its officers as to their roles and responsibilities. The Student Government Association advisor shall review all proposed changes to the Student Government Association Constitution and By-Laws as well as rules for its

composition and procedures and advise the Student Government Association concerning the consistency or inconsistency with University policies and procedures, including but not limited to the *Governing Regulations, Administrative Regulations, University Senate Rules* and the *Code of Student Conduct*.

Pursuant to KRS 61.810, the meetings of the Student Government Association are open meetings. Through the respective presiding officer, any person may request the privilege of the floor to address all meetings of the Student Government Association.

## B. Student-University Relationships

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The non-academic relationships between University students and the University are articulated in the document entitled, *Student Rights and Responsibilities: Part I - Code of Student Conduct: Rules, Procedures, Rights and Responsibilities Governing Non-Academic Relationships*, which has been adopted by the Board of Trustees and may be amended only by that body.

The academic relationships between University students and the University are incorporated in the document entitled, *Student Rights and Responsibilities: Part II - Selected Rules of the University Senate Governing Academic Relationships*. The rules in Part II have been adopted by the University Senate and may be amended only by that body.

Copies of the document, *Student Rights and Responsibilities: Parts I and II*, shall be made available to all students. The *Student Rights and Responsibilities: Parts I and II* are also available at [www.uky.edu/StudentAffairs/Code](http://www.uky.edu/StudentAffairs/Code). Registration by the student constitutes acceptance of the policies in the *Student Rights and Responsibilities* governing student-University relationships. In no case, however, shall this acceptance preclude legitimate efforts to obtain amendments to this document covering these relationships.

## C. The University Appeals Board - Jurisdiction

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There shall be a University Appeals Board (hereinafter UAB) with specific jurisdiction over student matters. The UAB shall be assigned either original or appellate jurisdiction over various students, as established by this *Governing Regulation*, as follows:

### 1. Disciplinary Offenses

In cases of disciplinary offenses (outlined in the *Code of Student Conduct*, Article II) where the student is sanctioned with social suspension, disciplinary suspension, or expulsion, the UAB shall have appellate jurisdiction.

### 2. Academic Offenses

~~(a) In cases of academic offenses (outlined in the *University Senate Rules*, Section 6.3) where the student contests guilt, the UAB shall have original jurisdiction.~~

~~(b) In cases of academic offenses (outlined in the *University Senate Rules*), ~~Section 6.3) where the only issue is the severity of the sanction,~~ the UAB shall have appellate jurisdiction. [The University Senate Rules](#) define the procedures that the UAB shall use in these cases and the scope of the actions that the UAB may take.~~

### 3. Violation of Student Rights

(a) In cases where a student claims a violation of student rights (outlined in the *Code of Student Conduct*, Article I), the UAB shall hear any case referred to it by the Dean of Students and may grant the written appeal of any student to hear a case not referred to it by the Dean of Students.

- (b) Registered student organizations that receive the majority of their regular operating budgets from allocations of student fee monies and/or University allocation shall have a hearing process which shall include final appeal to the UAB.
- (c) The UAB shall have jurisdiction over final decisions of University hearing agencies in which a student alleges a violation of student rights. In a case involving a student election in which a candidate alleges that his or her student rights were violated, the UAB may affirm the decision of the Student Government Association appellate body, refer the matter back to the Student Government appellate body to correct the error identified by the UAB, or affirm or void the election. The jurisdiction of the UAB does not extend to the selection of the President of the Student Government Association.

#### 4. Violation of Academic Rights

In cases where a student claims a violation of academic rights (outlined in the *University Senate Rules*, ~~Section 6.1~~), the UAB shall have ~~original~~ appellate jurisdiction. [The University Senate Rules define the procedures that the UAB shall use in these cases and the scope of the actions that the UAB may take.](#)

#### 5. College Honor Code Offenses

The UAB shall hold appellate jurisdiction over the decisions of college honor councils or committees, except that if the hearing panel, by majority of those present, decides the student's rights have been substantially violated, the hearing panel has original jurisdiction on the issue of guilt.

#### 6. Cases of Temporary Sanctions

When the Vice President for Student Affairs imposes temporary sanctions on a student, the UAB shall have appellate jurisdiction.

### D. Composition of the University Appeals Board

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1. The UAB shall consist of thirty (30) members, eighteen (18) faculty members and twelve (12) full-time students, and a Hearing Officer who shall be the Chair.
2. A hearing panel of the UAB shall consist of nine (9) members, at least five (5) of whom are faculty members, at least one (1) of whom is a student, and a Hearing Officer, who shall be the chair.
3. A quorum of the hearing panel for the conduct of business will be nine (9), including the Hearing Officer, at least five (5) faculty members (exclusive of the Hearing Officer) and at least one (1) student.

### E. Appointments to the University Appeals Board

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#### 1. The Hearing Officer

The Hearing Officer shall be the Chair of the hearing panel and shall be a person with training in the law appointed by the President of the University for a three-year term, subject to reappointment. The term shall begin on September 1, and end August 31. The Hearing Officer shall convene and preside at all meetings of the hearing panel, but does not vote as a member of the Board or have the authority to cast a tie breaking vote. All questions of the law, either substantive or procedural, and all procedural questions shall be addressed to and ruled upon by the Hearing Officer. The Hearing Officer shall have the authority to exclude any hearing panel member that the Hearing Officer determines has a conflict of interest or the appearance of a conflict of interest with a case. If the Hearing Officer cannot serve when needed, the President or, in the President's absence, the Provost shall appoint a temporary substitute.

## 2. The Student Members

- (a) The student membership of the UAB shall be appointed to one-year terms, subject to reappointment. Their terms shall begin September 1 and end August 31.
- (b) The student membership shall consist of four (4) graduate or professional students and eight (8) undergraduate students. The undergraduates must be full-time students and either sophomores, juniors or seniors in good standing. The graduate or professional student must be a full-time student, have been in residence at least one year and be in good standing.
- (c) The President shall appoint student members to the UAB from the recommendations submitted by the Student Government Association and the college deans. Six (6) student members shall be appointed from those names submitted by the Student Government Association and six (6) members from those names submitted by the college deans, totaling twelve (12) student members.

## 3. The Faculty Members

Faculty members of the UAB shall be appointed to staggered three-year terms by the President of the University upon the recommendation of the University Senate Council. All terms shall begin on September 1 and end on August 31. To minimize the possibility of a conflict of interest, faculty members with primary administrative appointments (more than fifty percent of their assignment allotted to administration) shall not be appointed to the UAB.

## 4. Temporary Appointments

- (a) If a sufficient number of the members of the UAB are not present or have been determined by the Hearing Officer to have a conflict of interest or the appearance of a conflict of interest at any time when that Board has duties to perform, the President of the University or, in the President's absence, the Provost, shall make such temporary appointments as are necessary to ensure that the required number of members are present. Such temporary appointments need not be preceded by the recommendations otherwise provided herein. However, in no case shall a faculty member replace a student member or a student member replace a faculty member.
- (b) If, at any time, in the judgment of the Hearing Officer, there are sufficient cases pending before UAB that it is unlikely that the pending cases can be processed within the time prescribed, the Hearing Officer shall notify the President of that fact. The President may, in accordance with the above provisions of GR XI Section E, activate additional boards and appoint a Hearing Officer for each such additional board, or appoint additional boards and hearing officers for designated cases and time periods.
- (c) The authority, jurisdiction, and range of possible actions of, and the guaranteed rights of an accused person before any special board or panel appointed or activated under the terms of (a) or (b) above shall be the same as those applicable to the regularly constituted board or panel.

## F. Procedures of the University Appeals Board

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Additional procedures of the UAB shall be those prescribed by *University Senate Rules* for academic cases, the *Code of Student Conduct* for non-academic cases, or by the UAB to effectuate the orderly conduct of its functions.

## G. Disposition of Cases – Authority

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The authority of the UAB over the disposition of academic cases is provided in the *University Senate Rules* for academic cases and in the *Code of Student Conduct* for non-academic cases. Decisions of the UAB are final.

## References and Related Materials

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KRS 61.820 - Schedule of regular meetings to be made available

KRS 164.131 – Board of Trustees of University of Kentucky – Membership -- Terms

KRS 161.810 - Continuance of status in case of annexation or consolidation of schools

University Senate Rules section 6.1

University Senate Rules section 6.3

Student Rights and Responsibilities: Part I - Code of Student Conduct: Rules, Procedures, Rights and Responsibilities Governing Non-Academic Relationships

Student Rights and Responsibilities: Part II - Selected Rules of the University Senate Governing Academic Relationships

## Revision History

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12/11/2001, 6/14/2005, 3/7/2006

For questions, contact: [Office of Legal Counsel](#)

## PART XI STUDENT

## AFFAIRS

A. Student Government Association

The University of Kentucky Student Government Association is recognized by the Board of Trustees, administration, and the University Senate as the official student body authority in University matters to ensure a maximum of self-government and to create mutual respect and liaison between students and the faculty and administration. It shall provide services to the students, faculty, and administration of the University and represent student opinion to the faculty, administration, and Board of Trustees. It may have responsibilities delegated to it by the President, the Office of the Vice President for Student Affairs and/or the University Senate.

The President of the Student Government Association shall be considered to be the President of the student body of the University specified in KRS 164.130.

The Student Government Association shall be representative of the student body of the University. It is authorized to develop rules for its composition and procedures which are consistent with rules and regulations of the University. Copies of these rules shall be made available to all members of the student body of the University, the Secretary of the University Senate, the Associate Provost for Academic Affairs, Vice President for Student Affairs, the President, and the Secretary of the Board of Trustees.

For purposes of budget and other matters relating to finance, the Student Government Association is responsible to an administrative officer designated by the President.

The Student Government Association shall adhere to all rules and regulations adopted by the Board of Trustees.

B. Student-University Relationships

The non-academic relationships between University students and the University are covered in the document entitled, Student Rights and Responsibilities. Part I. Code of Student Conduct: Rules, Procedures, Rights and Responsibilities Governing Non-Academic Relationships, which has been adopted by the Board of Trustees and may be amended only by that body.

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University relationships. In no case, however, shall this preclude legitimate efforts to obtain amendments to this basic document covering these relationships.

C. Lexington Community College Students

The relationship between students at Lexington Community College and the University of Kentucky is defined in the “Memorandum of Agreement Among the University of Kentucky, the Kentucky Community and Technical College System, and Lexington Community College Pursuant to House Joint Resolution 214.”

1. For non-academic matters, the Agreement, effective July 1, 2004, provides as follows:

(a) On July 1, 2004, and through June 30, 2006, Lexington Community College students shall have the responsibilities, services, privileges, and rights accorded to them before HJR 214.

(b) After June 30, 2006, Lexington Community College students shall be able to choose from certain University of Kentucky services on an individual basis without obligation to purchase any other or all services. Appropriate charges for the selected service(s) shall apply.

2. For academic matters, the Agreement provides as follows:

(a) Effective July 1, 2004, the Kentucky Community and Technical College System shall be responsible for academic and student support services for LCC students, except for services mutually agreed to by KCTCS and University of Kentucky.

(b) Effective July 1, 2005, LCC students shall come under the KCTCS Student Code of Conduct for academic matters.

(c) LCC students, enrolled on or before September 1, 2004, in associate degree programs approved by the UK Board of Trustees who complete the associate degree program on or before August 31, 2010, shall have their degrees conferred by the UK Board of Trustees. The degrees for all other students enrolled in LCC programs shall be awarded by the KCTCS Board of Regents.



<b>UNIVERSITY OF KENTUCKY ADMINISTRATIVE REGULATIONS</b>	IDENTIFICATION		PAGE
	AR III-1.0-1		1
	DATE EFFECTIVE	SUPERSEDES REGULATION DATED	
	3/19/92	7/1/83	

UNIVERSITY APPEALS BOARD

The University Appeals Board shall have appellate jurisdiction over decisions of the University Judicial Board and over decisions of faculty members on matters of University academic offenses.

The composition, appointment of members, jurisdiction, authority, procedures, and other matters relating to the University Appeals Board are detailed in Parts 1.61 through 1.67 of Student Rights and Responsibilities - Part I - Code of Student Conduct and in Section VI, Parts 5.1 through [5.24] 5.2.4, of the Rules of the University Senate.

Commonwealth of Kentucky  
Court of Appeals

NO. 2005-CA-001868-MR

UNIVERSITY OF KENTUCKY OFFICE  
OF STUDENT AFFAIRS; ET AL

APPELLANTS

v.  
APPEAL FROM FAYETTE CIRCUIT COURT  
ACTION NO. 05-CI-02497

BECKY ELLINGSWORTH

APPELLEE

ORDER DENYING RELIEF UNDER CR 65.08

\*\*\*\*\*

BEFORE: DYCHÉ, MINTON, AND TAYLOR, JUDGES.

This appeal has been taken from a judgment determining that the University of Kentucky had acted improperly in overruling a Student Government Association (SGA) decision that the appellee was the properly elected president of the SGA. The judgment ordered that the appellee be restored to the office. The university has filed this motion under CR 65.08 seeking to stay enforcement of the injunctive order pending appeal. Emergency relief was denied by a member of this Court.

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OCT 12 2005  
Office of the Clerk  
Court of Appeals

The legal issues in this appeal appear to center on the use of the University Appeal Board (UAB) to review the decision made by the SGA's supreme court. The UAB consists of administrators, faculty, and students and seems to work in an informal manner to resolve academic or disciplinary problems of individual students. Its procedures do not seem to satisfy the requirements of a situation where SGA has found it appropriate to remove an elected officer and place another student in that office which exercises responsibilities (including a seat on the Board of Trustees) and which has benefits. **The university has not cited any policy or regulation that it has adopted to bring such election disputes before the UAB.** The appearance of proper decision making was further harmed by the unilateral decision of an administrator to replace (for this case only) the student members of the UAB outside of the normal procedure for selecting such students.

The University has not shown that it will suffer irreparable injury if the appellee occupies the office pending appeal. There is no showing that any function of the university will be adversely impacted in a significant way.

We cannot say that the appellants have made a showing of such a possibility of success on the merits or of irreparable injury pending appeal so as

Therefore, the Court orders that the motion for relief pending appeal under CR 65.08 be, and it is hereby, DENIED.  
MINTON AND TAYLOR, JUDGES, CONCUR.

DYCHÉ, JUDGE, DISSENTS AND WOULD GRANT RELIEF ON THE GROUND THAT THE APPELLEE (BALINTIFF IN CIRCUIT COURT) HAS NOT DEMONSTRATED SUFFICIENT IRREPARABLE INJURY OR SUFFICIENT DEPRIVATION OF DUE PROCESS TO JUSTIFY THE CIRCUIT COURT ACTION.

ENTERED: 10/11/05  
*Becky Ellingsworth*  
JUDGE, COURT OF APPEALS

Re: Draft Changes to GR XI

**“Greissman continued his explanation** of the other revisions to Section XI, referring Council members to the {handout} he provided. He said the section in the Administrative Regulations (ARs) addressing the UAB would be removed, once it was codified in the GRs. In addition, he said it did not make sense for the Senate Rules to define all aspects of the UAB, since **the University Senate is concerned with the UAB as it relates to academic matters. The non-academic affairs of the UAB were defined in GR XI.C.** Grossman stated that changing the section on the UAB in the GRs would require changing the Senate Rules. Greissman concurred.

**“Grossman also asked about the relationship of the University Senate to the UAB in terms of its authority to set policies by which the UAB must abide.** The authority was partly based on the authority granted by the ARs. If the same language were not to be inserted in the GRs, it would require much more discussion. **Greissman stated that the GR in question did codify the authority of the University Senate over the UAB to set policy over academic affairs.** He said the Student Code of Conduct was moved to a non-academic section, and that **the change in no way limits the Senate's authority to set policy of the UAB.** **Guest Fink concurred.**

**“....There was discussion regarding whether the proposed changes presented by Greissman would affect the recently approved changes to the Senate Rules on academic offenses and the role of the UAB.** In response to a question by Grossman about Section C.2.a & b, **Ches [= Marcy Deaton] stated that with original jurisdiction, the UAB can call new witnesses, etc. For cases in which the UAB only holds appellate jurisdiction, the UAB can only review the case.** She confirmed, for Michael, that there are instances in which the UAB is the first body to hear a case.

“Grossman moved that the Senate Council approved the proposed changes to Section XI of the Governing Regulations ...Ellingsworth seconded. Grossman stated that if the Senate Council changes were not incorporated, the Senate Council should review it again. The motion passed unanimously.”

# PR 5

Office of the President  
January 24, 2006

Members, Board of Trustees:

## PROPOSED AMENDMENT TO THE GOVERNING REGULATIONS

Recommendation: that the attached revision to the Student Affairs section of the university's Governing Regulations (GR XI) be received for preliminary consideration and at the next regular meeting of the Board of Trustees be included on the agenda for action.

Note: Proposed additions are underlined; proposed deletions are lined through.

Background: Subsequent to the 2005 election for Student Government Association president, Interim Provost Scott Smith charged an ad hoc committee with the task of reviewing and revising GR XI (Student Affairs) to clarify the relationship between the university and the Student Government Association (SGA). In addition, Interim Provost Smith asked the ad hoc committee to recommend the jurisdictional authority that the University Appeals Board should have regarding decisions rendered by hearing bodies established by the SGA and other registered student organizations.

The ad hoc committee's work was guided by three principles: (1) to ensure the Student Government Association has sufficient autonomy to function as a representative and deliberative body; (2) to affirm the university's responsibility for and authority over SGA operations in matters related to fiscal affairs and adherence to the rules, policies, and regulations of the university; and (3) to incorporate within GR XI the definitional elements of the University Appeals Board, pertaining to the board's jurisdiction, the appointment of its members, and the general procedures governing the board's operation.

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Action taken:       Approved       Disapproved       Other \_\_\_\_\_

PART XI STUDENT  
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~~2. For academic matters, the Agreement provides as follows:~~

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- (a) In cases where a student claims a violation of student rights (outlined in the Code of Student Conduct, Article I), the UAB shall hear any case referred to it by the Dean of Students and may grant the written appeal of any student to hear a case not referred to it by the Dean of Students.
- (b) Registered student organizations that receive the majority of their regular operating budgets from allocations of student fee monies and/or University allocation shall have a hearing process which shall include final appeal to the UAB.
- (c) The UAB shall have jurisdiction over final decisions of University hearing agencies in which a student alleges a violation of student rights. In a case involving a student election in which a candidate alleges that his or her student rights were violated, the UAB may affirm the decision of the Student Government Association appellate body, refer the matter back to the Student Government appellate body to correct the error identified by the UAB, or affirm or void the election. The jurisdiction of the UAB does not extend to the selection of the President of the Student Government Association.

### 4. Violation of Academic Rights

In cases where a student claims a violation of academic rights (outlined in the University Senate Rules, Section 6.1), the UAB shall have original jurisdiction.

### 5. College Honor Code Offenses

The UAB shall hold appellate jurisdiction over the decisions of college honor councils or committees, except that if the hearing panel, by majority of those present, decides the student's rights have been substantially violated, the hearing panel has original jurisdiction on the issue of guilt.

### 6. Cases of Temporary Sanctions

When the Vice President for Student Affairs imposes temporary sanctions on a student, the UAB shall have appellate jurisdiction.

## D. Composition of the University Appeals Board

- 1. The UAB shall consist of thirty (30) members, eighteen (18) faculty members and twelve (12) full-time students, and a Hearing Officer who shall be the Chair.
- 2. A hearing panel of the UAB shall consist of nine (9) members, at least five (5) of whom are faculty members, at least one (1) of whom is a student, and a Hearing Officer, who shall be the chair.



3. A quorum of the hearing panel for the conduct of business will be nine (9), including the Hearing Officer, at least five (5) faculty members (exclusive of the Hearing Officer) and at least one (1) student.

#### E. Appointments to the University Appeals Board

##### 1. The Hearing Officer

The Hearing Officer shall be the Chair of the hearing panel and shall be a person with training in the law appointed by the President of the University for a three-year term, subject to reappointment. The term shall begin on September 1, and end August 31. The Hearing Officer shall convene and preside at all meetings of the hearing panel, but does not vote as a member of the Board or have the authority to cast a tie breaking vote. All questions of the law, either substantive or procedural, and all procedural questions shall be addressed to and ruled upon by the Hearing Officer. The Hearing Officer shall have the authority to exclude any hearing panel member that the Hearing Officer determines has a conflict of interest or the appearance of a conflict of interest with a case. If the Hearing Officer cannot serve when needed, the President or, in the President's absence, the Provost shall appoint a temporary substitute.

##### 2. The Student Members

- (a) The student membership of the UAB shall be appointed to one-year terms, subject to reappointment. Their terms shall begin September 1 and end August 31.
- (b) The student membership shall consist of four (4) graduate or professional students and eight (8) undergraduate students. The undergraduates must be full-time students and either sophomores, juniors or seniors in good standing. The graduate or professional student must be a full-time student, have been in residence at least one year and be in good standing.
- (c) The President shall appoint student members to the UAB from the recommendations submitted by the Student Government Association and the college deans. Six (6) student members shall be appointed from those names submitted by the Student Government Association and six (6) members from those names submitted by the college deans, totaling twelve (12) student members.

##### 3. The Faculty Members

Faculty members of the UAB shall be appointed to staggered three-year terms by the President of the University upon the recommendation of the University Senate Council. All terms shall begin on September 1 and end on August 31. To minimize the possibility of a conflict of interest, faculty members with primary administrative appointments (more than fifty percent of their assignment allotted to administration) shall not be appointed to the UAB.

#### 4. Temporary Appointments

- (a) If a sufficient number of the members of the UAB are not present or have been determined by the Hearing Officer to have a conflict of interest or the appearance of a conflict of interest at any time when that Board has duties to perform, the President of the University or, in the President's absence, the Provost, shall make such temporary appointments as are necessary to ensure that the required number of members are present. Such temporary appointments need not be preceded by the recommendations otherwise provided herein. However, in no case shall a faculty member replace a student member or a student member replace a faculty member.
- (b) If, at any time, in the judgment of the Hearing Officer, there are sufficient cases pending before UAB that it is unlikely that the pending cases can be processed within the time prescribed, the Hearing Officer shall notify the President of that fact. The President may, in accordance with the above provisions of GR XI Section E, activate additional boards and appoint a Hearing Officer for each such additional board, or appoint additional boards and hearing officers for designated cases and time periods.
- (c) The authority, jurisdiction, and range of possible actions of, and the guaranteed rights of an accused person before any special board or panel appointed or activated under the terms of (a) or (b) above shall be the same as those applicable to the regularly constituted board or panel.

#### F. Procedures of the University Appeals Board

Additional procedures of the UAB shall be those prescribed by University Senate Rules for academic cases, the Code of Student Conduct for non-academic cases, or by the UAB to effectuate the orderly conduct of its functions.

#### G. Disposition of Cases – Authority

The authority of the UAB over the disposition of academic cases is provided in the University Senate Rules for academic cases and in the Code of Student Conduct for non-academic cases. Decisions of the UAB are final.



**Opinion of General Counsel  
Opinion # 2014-01**

**Jurisdiction and Authority of the University Appeals Board**

The Senate Rules and Elections Committee (SREC) submitted to the General Counsel a list of specific questions regarding the relationship among the Governing Regulations (GR), the University Senate Rules (SR), and the University Appeals Board (UAB). This opinion responds to those questions.

In order to respond to the SREC's specific questions, it is first necessary to outline the jurisdiction granted to the UAB and the University Senate by the Board of Trustees through the *Governing Regulations*. GR XI.C establishes the UAB, grants it specific jurisdiction over student matters, and specifies whether its jurisdiction is original or appellate in certain types of matters:

GR XI.C: The University Appeals Board - Jurisdiction

There shall be a University Appeals Board (hereinafter UAB) with specific jurisdiction over student matters. The UAB shall be assigned either ***original or appellate jurisdiction*** over various students, as established by this *Governing Regulation*, as follows:

2. Academic Offenses

(a) In cases of academic offenses (outlined in the *University Senate Rules*, Section 6.3) **where the student contests guilt, the UAB shall have *original jurisdiction*.**

(b) In cases of academic offenses (outlined in the *University Senate Rules*, Section 6.3) **where the only issue is the severity of the sanction, the UAB shall have *appellate jurisdiction*.**

4. Violation of Academic Rights

In cases **where a student claims a violation of academic rights** (outlined in the *University Senate Rules*, Section 6.1), **the UAB shall have *original jurisdiction*.**

**Original Jurisdiction** is defined as, “A court’s power to hear and decide a matter before any other court can review the matter.” BLACK’S LAW DICTIONARY (9<sup>th</sup> ed. 2009) **Appellate Jurisdiction** is defined as, “the power of a court to review and revise a lower court’s decision.” *Id.* In other words, in a case of **original jurisdiction** the UAB acts as a fact finding body, decides guilt or innocence, and, if there is a finding of guilt, determines the sanction. Conversely, in **appellate jurisdiction**, the UAB simply reviews the prior decision of the instructor concerning whether the sanction is appropriate.

GR XI.G provides, “**The authority of the UAB over the disposition of academic cases is provided in the University Senate Rules for academic cases...**” However, the authority of the University Senate to determine the disposition of academic cases is limited to those situations where the UAB has **appellate** jurisdiction.

Any other interpretation is inconsistent with the **original jurisdiction** granted to the UAB by the Board of Trustees. The Governing Regulations cannot be construed so that one provision (GR XI.G) contradicts another provision (GR XI.C). Governing Regulations should be interpreted in a way that renders them compatible, not contradictory. Antonin Scalia & Bryan A. Garner, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS*, 180-82 (2012).

The responses to most of the questions asked by the SREC turn on whether the UAB has original or appellate jurisdiction in that particular situation. When the UAB is exercising **original jurisdiction** the SREC may not restrict the UAB’s authority and when the UAB is exercising **appellate jurisdiction** the SREC may restrict the UAB’s authority.

## **THE SREC’S QUESTIONS**

### **QUESTION 1.**

The Senate Rules prescribe that if a student commits an academic offense (as determined by the instructor and, *if the student appeals his or her guilt*, the University Appeals Board), and there is no record of a prior offense, and the recommended penalty is no more severe than an E in the course, then a letter of warning goes into the student’s record at the Registrar’s Office. The purpose of the letter is so that if the student commits an academic offense again, the appropriate University authorities can become aware of the existence of the prior offense.

- a. Under the above circumstances, does the UAB have the discretion to instruct the Registrar not to keep a letter of warning in the student’s record?

**Response 1a:** This is an example of **original jurisdiction**. In cases of original jurisdiction, the UAB acts as a fact finding body, decides guilt or innocence, and,

if there is a finding of guilt, determines the sanction. Therefore, if the UAB determines the student is guilty, the UAB determines the penalty, which may include instructing the registrar to remove a warning letter from the student's record. If the UAB finds that the student is not guilty, there is no basis for a warning letter and none should have been created. Per the Senate Rules, a warning letter should not be created until either: 1) the student fails to appeal by the deadline: or, 2) the student appeals and the UAB makes a final decision. (S.R. 6.4.3.A.7)

- b. Would a UAB instruction to the Registrar to not maintain the letter of warning in the student's record be a violation of federal record-keeping rules (that expect student records to be maintained in their designated files)?

**Response 1b:** Given the answer to question 1a. above, this question is moot.

**QUESTION 2.** The Senate Rules prescribe that the UAB can reduce the severity of the penalty that an instructor originally imposed for an academic offense, but it cannot increase it, *regardless of whether the student is appealing the finding of an offense or the severity of the penalty.*

- a. If the student appeals *the finding of the academic offense* to the UAB, and the UAB finds that the student did indeed commit that offense, does the UAB have the authority to impose a penalty more severe than the instructor originally assigned?

**Response 2a:** This is an example of *original jurisdiction*. In cases of original jurisdiction, the UAB acts as a fact finding body, decides guilt or innocence, and, if there is a finding of guilt, determines the sanction. The appropriate sanction, as determined by the UAB, may be more or less severe than the sanction originally assigned by the instructor. The Senate Rules cannot limit the UAB's authority regarding the penalty. The UAB may impose any penalty it deems appropriate, so long as the penalty is consistent with University grading systems and other terms defined by the Senate Rules, such as suspension, expulsion, etc.

- b. If the student does not appeal the finding of the offense, but just *the severity of the penalty* assigned by the instructor, does the UAB have the authority to impose a penalty more severe than the instructor originally assigned?

**Response 2b:** This is an example of *appellate jurisdiction*. In cases of appellate jurisdiction, the UAB simply reviews the prior decision of the instructor concerning whether the penalty is appropriate. In this instance the Senate Rules may provide that the UAB is limited to only upholding or reducing the sanction. See Senate Rule 6.4.4,B.4(b), which provides that if a student

appeals the severity of a sanction, the UAB may only reduce the penalty subject to the limitations provided. It should be noted, however, that the Senate Rules cannot be so restrictive that they basically eliminate due process. In other words, one might argue that if there is an appellate process but its jurisdiction is so restrictive that there can be no decision except the one that has already been made, there is no due process.

**QUESTION 3.** The Senate Rules prescribe a minimum penalty of zero on an assignment for a first academic offense, an E in the course for a second offense (if the first offense received a penalty less than an E in the course; otherwise the minimum penalty is suspension), and suspension for one semester for a third offense.

- a. Is it permissible for the Senate Rules to specify minimum penalties of increased severity for first, second, and third offenses?

**Response 3a:** The Senate Rules may specify minimum penalties for professors who assign sanctions, but they are not binding on the UAB in cases of **original jurisdiction**. In cases of original jurisdiction, the UAB acts as a fact finding body, decides guilt or innocence, and, if there is a finding of guilt, determines the sanction. The UAB, when determining an appropriate sanction, is not bound by the minimum penalties prescribed by the Senate Rules. In those instances where the UAB is exercising **appellate jurisdiction**, it is permissible for the Senate Rules to specify minimum penalties.

- b. Is it permissible for the Senate Rules not to allow a student to appeal an imposed penalty if it is the minimum specified penalty for that kind of offense? (This question assumes that the student is not appealing guilt.)

**Response 3b:** If the minimum penalty would result in the loss of something (e.g. a privilege, participation in classes, enrollment, etc.), the Commonwealth and U.S. Constitutions' guarantee of due process require that the student be provided an opportunity to appeal. In other words, if the minimum penalty allowed under the Senate Rules for a particular violation is suspension, expulsion, etc., the student must be provided an opportunity to appeal. The University Senate Rules cannot contradict the Commonwealth and United States Constitutions.

- c. If a student appeals the finding of an academic offense to the UAB, and the UAB finds that the student did indeed commit that offense, does the UAB have the authority to impose a penalty less severe than the minimum prescribed by the Senate Rules?

**Response 3c:** This is an example of **original jurisdiction**. In those instances where the UAB is exercising original jurisdiction, the minimum penalties established by the Senate Rules are not binding on the UAB. They are merely advisory. In cases of original jurisdiction, the UAB acts as a fact finding body, decides guilt or innocence, and, if there is a finding of guilt, determines the sanction, which might be less severe than the minimum penalties in set for in the Senate Rules. Senate Rule 6.4, which states “Instructors, administrators, and the Appeals Board do not have the authority to impose penalties less than the minimum prescribed by these rules”, does not apply to cases where the UAB has original jurisdiction. Any other interpretation is inconsistent with the original jurisdiction granted to the UAB by the Board of Trustees.

- d. If the student does not appeal the finding of the offense, but *just the severity of the penalty* assigned by the instructor, does the UAB have the authority to impose a penalty less severe than the minimum prescribed by the Senate Rules? (This question is for cases in which the imposed penalty is greater than the minimum penalty.)

**Response 3d:** This is an example of **appellate jurisdiction**. In cases of appellate jurisdiction, the UAB simply reviews the prior decision of the instructor concerning whether the penalty is appropriate. In this instance the Senate Rules may provide that the UAB is limited to only upholding or reducing the sanction. Senate Rule 6.4.4.B.4(b) provides that if the student appeals the severity of the penalty, the UAB, “may reduce the penalty, subject to the following limitations...” The Senate Rules are clear in this regard.

**Question 4.** The Senate Rules prescribe that if a student **appeals a grade** that was assigned by an instructor in a course, then the UAB can order the grade to be changed only if the UAB finds that it has been “*proved*” that the grade was based on anything other than “*good-faith judgment*.” Can the UAB order an instructor to change a student’s grade if the UAB does not first make this finding?

**Response 4:** This is an example of **original jurisdiction**. In cases where a student claims a violation of academic rights, the UAB has original jurisdiction. In these instances, the UAB acts as a fact finding body, decides if the student’s academic right were violated, and, if a violation is found, determines the appropriate remedy. The Senate Rules cannot limit the original jurisdiction of the UAB in cases involving a claim of a violation of academic rights. Any other interpretation is inconsistent with the **original jurisdiction** granted to the UAB by the Board of Trustees.