

UNIVERSITY JUDICIAL REVIEW BOARD PROCEDURES FOR APPEALS

I. Structure and Authority of the University Judicial Review Board

A. Purpose

The purpose of the University Judicial Review Board (JRB) is to ensure fairness in student disciplinary proceedings consistent with due process of law.

Specifically, the JRB is the University Committee charged with reviewing:

1. Appealed decisions of the University Judiciary Committee (UJC) when acting within its original jurisdiction;
2. Decisions of the UJC referred for review by the Vice President for Student Affairs;
3. Appealed decisions of the University Sexual Assault Board; and
4. Appealed decisions of other University bodies if an appeal to the JRB is incorporated within their operating procedures. In such appeals, the procedures shall follow, to the extent practicable, the procedures described below for appeals from the UJC and the Sexual Assault Board, unless another procedure is specified.

These procedures do not constitute a contract between the University and University students, past or present.

B. Composition

The University Judicial Review Board shall have eleven members as prescribed below:

1. The Chair of the JRB

- a. There shall be one Chair of the JRB. The Chair shall be appointed by the President for such term as the President shall determine. If for any reason the office of Chair of the JRB becomes vacant, the President shall appoint a replacement.
- b. The Chair of the JRB shall be responsible for all administrative and adjudicative functions of the JRB, including chairing all Appellate Review Panels, all Appellate Hearings, and all Referral Proceedings; coordinating the official activities of the JRB; and serving as the public spokesperson for the JRB.

c. If the Chair of the JRB is for any reason unable to fulfill a specific function of the office of the Chair, the Chair may designate another member of the JRB to discharge said duties on the Chair's behalf.

2. Faculty and Staff Members

There shall be five members of the JRB who are members of either the faculty or the staff of the University. They shall be appointed by the President for such terms as the President shall determine. If a faculty or staff member seat on the JRB becomes vacant, the President shall appoint a replacement.

3. Student Members

a. There shall be five student members of the JRB. All students who are in the process of completing or have completed their second semester of full-time study at the University shall be eligible to serve on the JRB.

b. Student members shall be appointed by the Vice President for Student Affairs, in consultation with the President of Student Council, to serve one-year terms. Student members may not be affiliated with the UJC or Sexual Assault Board. If for any reason a student membership becomes vacant, or due to the calendar or other special circumstances no student member is available to consider an appeal, the Vice President for Student Affairs may, in consultation with the Student Council President, appoint a replacement or alternate.

c. The Chair of the JRB shall ensure that all JRB members are thoroughly acquainted with these Procedures for Appeals, as well as generally familiar with any procedures and policies of subordinate judicial bodies that are relevant to a particular appeal.

II. Appeals from Decisions of the University Judiciary Committee or the Sexual Assault Board

A. Grounds for Appeal

Every student or student group found guilty by the UJC of violating the University Standards of Conduct or either the complainant or the accused student in cases decided by the University Sexual Assault Board has the right to request an appeal to the JRB when he/she/it believes and alleges that one or more of the following is true:

1. Because of a procedural error during the trial/hearing, the party requesting the appeal, hereafter "the Appellant," was not afforded basic procedural protections guaranteed by Article IV of the UJC Constitution or relevant provisions of the Procedures for Cases of Sexual Assault, and such error had a substantial prejudicial impact on the outcome of the trial/hearing;

2. Evidence not discovered before the conclusion of the Appellant's trial/hearing and not reasonably capable of discovery before the conclusion of the Appellant's trial/hearing would show that the decision reached by the subordinate body was erroneous; or

3. The sanction imposed by the subordinate body was unduly harsh, clearly excessive, or grossly inappropriate to the offense.

B. The Appellant is entitled to the following:

1. To choose counsel from the current University student body ("student counsel") to assist in the preparation and presentation of the Appeal Request and case.

2. To be given reasonable and timely access to copies of all records, documents, exhibits, audio recordings, correspondence, and other evidence introduced at the trial/hearing to facilitate the preparation and presentation of the appeal.

3. If an Appellate Hearing is held, to have the reasonable opportunity to be present or present with student counsel at all proceedings in which a JRB Appellate Hearing Panel receives evidence, testimony, or other arguments relevant to the appeal.

4. If an Appellate Hearing is held, to present oral and written arguments, witnesses, and in the case of appeals pursuant to Article II (A)(2), evidence relevant to the grounds for appeal at such proceedings, subject to the established hearing format and procedures.

5. To elect to have all personally identifiable information (that is not otherwise in the public domain and which is privileged by law or University policy) relevant to the appeal kept confidential to the extent required by applicable law or University policy, and the right to elect to have an Appellate Hearing, if held, conducted publicly or privately in accordance with guidelines established by the JRB and the confidentiality policies of the subordinate body and the University. The exercise of these rights shall not be affected by the Appellant's previous decision to have the original proceedings held publicly or privately or the Appellant's previous decision to waive or maintain confidentiality.

C. An Appellant must submit a Request for Appeal that is delivered to the University office of the Chair of the JRB within 14 calendar days of the date on which the subordinate body notifies the Appellant of its decision, and must provide a copy of the Request to the Chair of the subordinate body. The Request for Appeal shall be a signed statement which explicitly cites the relevant grounds for appeal listed in Article II (A), identifies the specific procedural or substantive decision to be challenged, the basis of the challenge, and in the case

of appeals pursuant to Article II (A)(2), describes the new evidence to be presented and why it was not reasonably discoverable before the conclusion of the trial/hearing.

D. If a Request for Appeal based on new evidence is submitted after the 14 day limit, the Chair of the JRB may, in extraordinary circumstances as determined by the Chair in the Chair's sole reasonable discretion, extend the time limit.

E. Initial Review of the Request for Appeal

1. The Chair of the JRB shall acknowledge receipt of the Request for Appeal and copy the acknowledgement to the Chair of the subordinate body, the original complainant(s) in a UJC case, the non-appealing party in a Sexual Assault Board case, and the Vice President for Student Affairs.

a. The Chair of the subordinate body shall provide, in a timely manner, the Chair of the JRB with copies of all records, documents, exhibits, audio recordings, correspondence, and other evidence used in the trial/hearing of the Appellant's case.

b. The Vice President for Student Affairs shall not begin his/her review of a UJC decision until the 14-day deadline for filing an appeal has passed. If an appeal to the JRB is filed within the 14-day period, the Vice President shall take no further action unless and until the case is remanded and the UJC issues another decision.

c. The Chair of the subordinate body, the original complainant(s) in a UJC case, the non-appealing party in a Sexual Assault Board case, and/or the Vice President for Student Affairs may, if they wish, provide the Chair of the JRB with statements of their position with respect to the Request for Appeal. Any such statement should be delivered to the Chair of the JRB no later than five calendar days following the filing of the Request for Appeal with the JRB.

2. The Chair of the JRB shall convene an Appellate Review Panel to review the Request for Appeal within 14 calendar days of the receipt by the Chair of the JRB of the Request for Appeal and of relevant materials from the subordinate body, subject to an extension for good cause in the Chair's sole discretion. The Appellate Review Panel shall include the Chair of the JRB and two other members of the JRB selected by the Chair and should, to the extent practicable, include at least one student member.

3. The Appellate Review Panel shall examine the Request for Appeal, the relevant materials from the subordinate body, as well as the statements of position filed by the parties, if any, to determine whether a decision can be reached as to whether one or more of the grounds for appeal has validity. If

more than one ground for appeal is cited in the Request for Appeal, then each of the alleged grounds will be considered separately.

4. If the Appellate Review Panel in its sole reasonable discretion is able to reach a decision as to the validity of the appeal based on the record and written submissions of the parties, if any, it may render a decision without convening an Appellate Hearing.

5. If the Appellate Review Panel is unable to reach a decision as to the validity of the appeal based on the record and written submissions of the parties, it may:

a. Request the Appellant, the original complainant(s) in a UJC case, the non-appealing party in a Sexual Assault Board case, the Chair of the subordinate body, and/or any other relevant person or entity to submit additional information or such other response as will enable the Panel to reach a decision on the Appeal or of the necessity to convene an Appellate Hearing; and/or

b. Convene an Appellate Hearing.

F. The Appellate Hearing

1. If the Appellate Review Panel decides to hold an Appellate Hearing, the Chair of the JRB shall notify the Appellant, the Chair of the subordinate body, the original complainant(s) in a UJC case, the non-appealing party in a Sexual Assault Board case, and the Vice President for Student Affairs of the scheduled time and location of the hearing, the hearing format and procedures, and the rights and responsibilities of participants. The scheduled date of the Appellate Hearing shall be not less than ten or more than thirty calendar days from the date on which the Appellate Review Panel reaches its decision to conduct an Appellate Hearing, unless the JRB Chair decides otherwise for good cause.

2. The Appellate Hearing Panel shall consist of the Chair of the JRB and the Appellate Review Panel, except for replacements designated by the Chair.

3. The Appellate Hearing Panel shall adopt the factual findings of the subordinate body as conclusive unless the Appellate Hearing Panel determines that the introduction of new evidence is directly relevant to the grounds for appeal presented in the Appeal Request, or that the introduction of said evidence is in the best interest of the prompt and fair resolution of the case.

4. The Appellant shall have the burden of demonstrating that it is more likely than not that one or more of the legitimate grounds for appeal has validity.

5. Although the Appellate Hearing format will be flexible to accommodate the interests of equity and fairness, it will take the following general form:

- a. The Appellant, or Appellant's student counsel, followed by the representative of the subordinate body (hereafter the Respondent), shall have an opportunity to present general opening statements. The Panel may at its discretion and with notice to the parties also permit the original complainant(s) in a UJC case or the non-appealing party in a Sexual Assault Board case to serve as a co-Respondent with all of the rights of the Respondent. The complainant(s) in a UJC case or the non-appealing party in a Sexual Assault Board case shall have the right to choose counsel from among the full-time student body of the University ("Student Counsel ") and to consult pertinent records, tapes, and other materials from the trial/hearing in preparing his or her statement. If the complainant(s) in a UJC case or the non-appealing party in a Sexual Assault Board case elects not to address the Appellate Hearing Panel, this decision will not affect the Appellate Hearing Panel's decision process.
- b. If the Panel has determined that the presentation of evidence and/or witnesses is directly relevant to the grounds for appeal or is in the best interest of the prompt and fair resolution of the case, the Appellant, followed by the Respondent, shall have an opportunity to present evidence and other materials stemming from the original trial/hearing and witnesses. Witnesses shall be presented through direct examination by the parties or their student counsels. After direct examination, the parties may suggest, in writing, questions to be asked of the witnesses by the Chair, which shall be asked at the Chair's discretion.
- c. The Appeal Hearing Panel may decide to solicit testimony or evidence from witnesses or other persons not named by the parties. The Chair of the JRB must notify the parties and permit them to be present whenever solicited evidence or testimony is being presented.
- d. Parties may at any time object to the admissibility of the evidence being presented on the grounds that is highly prejudicial, plainly redundant, or clearly irrelevant. The Chair may either rule directly on the admissibility of evidence or testimony or may call the panelists into recess to discuss the matter.
- e. Subject to the discretion of the Chair, who may limit or refuse to permit questions, the Appellate Hearing Panelists may question any hearing participant at any point during the hearing.
- f. All University students submitting testimony or evidence will be advised of the applicability of the Honor Code, and all participants who are not University students shall be asked to affirm that they will deliver truthful testimony.
- g. Private attorneys will be allowed to be present at the hearing on behalf of the parties. They may consult with their respective parties during the proceeding but may not address the Panel or otherwise participate in the proceeding.

h. The Appellate Hearing Panel may continue its proceedings over a period of up to 14 calendar days. The presentation of evidence and arguments must conclude within 14 calendar days of the commencement of the Appellate Hearing proceedings unless the Chair determines otherwise for good cause.

i. After the presentation of evidence, or after the Chair concludes the hearing, the parties shall be permitted to present closing arguments.

j. Following the opportunity for closing arguments, the Appellate Hearing panelists shall recess for deliberations. All discussions held in deliberations shall be kept strictly confidential, except for any information which becomes public knowledge, or where disclosure may be authorized by law, University policy, or in connection with the authorized discharge of duties for the University. If necessary and appropriate, the Appellate Hearing Panel may continue its discussions over a period of not more than seven calendar days, at which time the Appellate Hearing Panel must deliver a decision. The Chair may extend these discussions past seven calendar days for good cause.

G. Decision of the Appellate Review or Appellate Hearing Panel

1. If the Appellate Review or Appellate Hearing Panel determines that the Appellant has demonstrated that it is more likely than not that the grounds described in II (A)(1) or II (A)(2) have validity, the Panel may remand the case to the subordinate body for a new trial or reverse or modify the decision below. The Appellate Review or Hearing Panel may establish stipulations and guidelines for the procedural treatment of the case during the second trial/hearing.

2. If the Appellate Review or Hearing Panel determines that the Appellant has demonstrated that it is more likely than not that the ground described in II (A)(3) has validity, the Panel may:

a. Remand the case to the subordinate body with recommendations for revision of the sanction; or

b. Directly modify the sanction.

3. If the Appellate Review or Hearing Panel does not find that any of the conditions outlined in II (A) apply or if the Panel concurs with the decision of the subordinate body, the decision of the subordinate body will be upheld. Notwithstanding the foregoing, the Panel may alter the terms or conditions of the sanctions if necessary to avoid hardship or impracticability.

4. If a second trial/hearing has already been held by a subordinate body, the Appellate Review or Hearing Panel will not remand the case to the subordinate body. The Appellate Review or Hearing Panel shall, in the interest of the prompt

and equitable resolution of the Appeal, decide to reverse, affirm, or modify, in whole or in part, the decision of the subordinate body.

5. Appellate Hearing panelists shall have the right to submit written dissenting and concurring opinions into the formal record of the Appellate Hearing.

6. The Chair of the JRB shall provide written notification and explanation of the Panel's decision to the Appellant, the Chair of the subordinate body, the complainant(s) in a UJC case or the non-appealing party in a Sexual Assault Board case, and the Vice President for Student Affairs.

III. Review of UJC Decisions Referred by the Vice President

A. Referral by the Vice President

1. The Vice President for Student Affairs shall review all final decisions of the UJC not appealed to the JRB as provided in the UJC By-laws. If the Vice President believes that the decision of the UJC warrants further review, he or she may:

- a. Remand the case back to the UJC for review, reconsideration, or retrial; or
- b. Refer the case to the JRB for review in accordance with the procedures described above.

2. If the Vice President elects to refer the case to the JRB, the Vice President shall send a written Referral Notice to the Chair of the JRB.

B. Within 14 calendar days of his/her receipt of a Referral Notice from the Vice President, the Chair of the JRB shall send written notice of the referral to the Chair of the UJC, the Complainant(s), and the Accused Student or Student Group. Said notice shall include a copy of the Vice President's written Referral Notice; an explanation of the JRB's purpose and procedures; and an explanation of participants' rights and responsibilities.

C. The Chair of the UJC shall timely provide the Chair of the JRB with copies of all evidence, documents, records, and other materials introduced at the trial of the case.

D. The procedure for considering cases referred to the JRB by the Vice President shall be, to the extent practicable, the same as that described for cases appealed to the JRB, with the Chair of the JRB having the sole discretion to make such alterations and modifications as he/she deems reasonable and appropriate under the circumstances.

IV. Records of Appeals

1. The Chair of the JRB (or designee) shall be responsible for maintaining an accurate record of all evidence, argument, correspondence, and documents relevant to all cases coming before the JRB.
2. All records shall be retained for a period of at least twelve months following the conclusion of any JRB proceeding.
3. The Chair of the JRB (or designee) shall return all materials received from the subordinate body to that body's Chair.
4. There shall be no right of appeal from any decision of the JRB.

V. Effect of Failure to Comply with Technical Requirements

Failure to observe the time limits or other technical procedural requirements in these procedures shall not constitute an abridgement of rights so long as fairness consistent with constitutional due process is respected and observed.

VI. Amendments

These procedures may be amended at any time in writing by the President or, at the President's discretion, by the Vice President for Student Affairs. Such amendments shall apply to any appeals/referrals made to the JRB on or after the date of the amendment(s).

Adopted:

John T. Casteen III, President

Date