



**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 (9th 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.