

Dr. Anne Reber
Dean of Student Life

MEMORANDUM

DATE: May 7, 2021

TO: Dr. John Stallone
Speaker, Faculty Senate

FROM: Dr. Anne Reber
Chair, Rules and Regulations Committee

SUBJECT: Proposed Revisions to the Texas A&M Student Rules

Attached please find proposed revisions to the Texas A&M University Student Rules as approved by the Rules and Regulations Committee. These changes are for the following section:

Student Rule 62

Approved by the Student Rules and Regulations Committee on May 7, 2021

Approved by the Faculty Senate on June 14, 2021

Approved by the President on July 21, 2021

PROPOSAL

Please see attached rule with tracked changes.

JUSTIFICATION

To bring SR 62.1.2 into line with the Title IX (CREI) office's definition of "protected class," as found here: <https://titleix.tamu.edu/about/glossary/>.

PROPOSED BY:

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Present Rule with additions in **bold red font** and deletions ~~struck~~

62. First Professional Appeals Panel

(Revised: 2018) **(Revised 2021)**

The decision as to which procedure to utilize for a grievance filed by a student shall be made solely by the university and shall be based on the fact pattern of each particular case. Each grievance shall be directed to a specific procedure and shall be accorded only one opportunity to be adjudicated unless the appeal body remands for further review.

62.1 Scope.

To conduct a review of the file or files stemming from allegations of due process violations only, after all administrative processes related to (a) suspensions, dismissals or blocks for scholastic deficiency in a student's academic program; and (b) appeals of disputes over final course grades have been exhausted in first professional programs (JD, MD, DDS, DVM, PharmD).

This process allows a student an appeal at the university level, that is, beyond the first professional program regarding allegations of material due process violations only. This appeal will consist of a review of the file or files pertaining to the student's complaint and any information submitted by the student to support their appeal. There will be no witnesses at the appeal (although at the sole discretion of the Chair, the student or the respondent may be asked to provide information or to answer clarifying questions to assist the panel in their decision making). The only two possible outcomes in the First Professional Appeals Panel (FPAP) hearing are: 1) a finding that there was no material defect in due process and therefore the appealed decision is affirmed, or 2) a finding that there was a material defect in due process and therefore the case is remanded back to the professional school to repair the due process defect and to render a decision.

62.1.1 Scholastic Dishonesty. Actions stemming from scholastic dishonesty, and any appeal of that action, will be dealt with through the Aggie Honor System Office.

62.1.2 Discrimination. Student Rule 45 should be used for grievances concerning ~~race, color, national or ethnic origin, religion, age, sexual orientation, or veteran status.~~ **race, color, sex, gender identity, age, religion, disability, national origin, immigration status, citizenship status, sexual orientation, genetic information, or veteran status.**

62.1.3 Sexual Harassment. Student Rule 47 should be used for grievances concerning sexual harassment when the alleged offender is an employee of the university.

62.1.4 Disability Accommodations in Academic Programs. Student Rule 46 should be used for grievances concerning disability accommodations in academic programs.

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62.1.5 Graduate Academic Appeals Panel. Student Rule 59 should be used for all graduate or professional students not including first professional students (JD, MD, DDS, DVM, PharmD). First professional student appeals will be addressed by the First Professional Appeals Panel (FPAP) as described in this rule (Rule 62).

62.1.6 Eligibility. The eligibility to obtain an Appeal before the First Professional Appeals Panel (FPAP) means that the student (JD, MD, DDS, DVM, PharmD) seeking an appeal has completed all of the hearing and appeal processes in their school and have complied with all prerequisites as set forth in this rule.

62.2 Definitions.

In this rule, the following words have the following definitions and no other:

“Adverse decision” means a decision by a faculty member or administrator that negatively impacts the student and for which the student wishes to pursue a grievance under this rule.

“Appeal” means an examination of the file and appeal documents only to ascertain whether a material violation of due process has occurred. At the sole discretion of the Chair, the student or the respondent may be asked to provide information or to answer clarifying questions to assist the panel in their decision making. Neither the respondent nor the student are entitled to attend the Appeal. However, if one is asked to provide clarifying information, the other shall be present to hear that same information.

“Assertion” means a contention or theory about the existence of some state of being. An assertion is established or disproved by information.

“Credible” means believable by a reasonable person.

“First professional faculty member” means an individual holding a position that includes responsibilities for teaching students in JD, MD, DDS, DVM, or PharmD in which the primary title includes the word “professor,” “instructor,” “lecturer,” or “librarian” regardless of other rank of appointment qualifiers associated with the title. Appointments with the word “dean” or “provost” with or without a specified faculty rank higher than assistant professor are normally tenured faculty appointments.

“Information” means details by which an alleged fact is established or disproved. Information establishes or disproves an assertion.

“May” means a condition that is not required to be met; it is discretionary. Contrast “shall.”

“Material violations of due process” means that some part of an antecedent process had a defect that materially affected the outcome of the decision about which the student is appealing. A defect in due process can occur in: the written notice, the opportunity to review the information supporting the action; the opportunity to be heard, either in writing or in person according to the professional

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school's procedures and/or the lack of a reasonable factual basis for the decision of the final appeal available to the student in the professional school.

"Parties" means the student or the respondent.

"Preponderance of information" means the greater weight of credible information submitted in the Appeal. For a fact to be established by a preponderance of the information the FPAP must find the fact is more likely true than not true.

"Respondent" means the chair of the panel, faculty member, or administrator who facilitated the process about which the complaint is being made.

"Shall" means a condition that must be met. Contrast "may."

"Some credible information" means a quantity of information that is believable by a reasonable person.

"Student" means an individual first professional student who is enrolled as a JD, MD, DDS, DVM, PharmD student at the university.

62.3 Membership.

The pool of first professional faculty and students that sit as a panel on a FPAP shall be appointed by the President or designee. A FPAP shall be comprised of the chair, vice chair, seven (7) first professional faculty members, three (3) first professional students, and two (2) first professional student alternates, none of whom shall be from the appealing student's college and/or program. A quorum consists of the chair or vice chair, three (3) faculty members and two (2) first professional students.

62.4 Pre-Appeal Procedures.

62.4.1 If, after completing all required steps in the Professional School, the student has not received a satisfactory outcome as a result of a material defect in due process, the student may appeal to the FPAP. To be eligible to receive an Appeal before the FPAP, a student must complete and file a First Professional Appeal Request Form (FPARF) with the Associate Provost for Graduate and Professional Studies. The student must file the FPARF within ten (10) university business days after receiving the dean's (or designee's) letter from their Professional School notifying them of the outcome of their hearing in the Professional School in which they are enrolled.

62.4.2 Chair Review. Upon receipt of an FPARF, the Associate Provost for Graduate and Professional Studies shall deliver a copy of the form and all attachments to the Chair of the FPAP. The Chair shall assess the materials to determine if the student has provided some credible information that, if left uncontested in the FPAP Appeal, convinces the Chair that the FPAP could conclude that a material due process violation has occurred.

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62.4.3 If the student has not provided some credible information that, if left uncontested in the FPAP Appeal, convinces the Chair that the FPAP could conclude that a material due process violation has occurred, the Chair shall notify the student and Associate Provost for Graduate and Professional Studies in writing that the student's request for a FPAP Appeal is rejected. The Chair's decision is final.

62.4.4 If the student has provided some credible information that, if left uncontested in the FPAP Appeal, convinces the Chair the FPAP could conclude that a material due process violation has occurred, the chair shall notify the student and Associate Provost for Graduate and Professional Studies in writing that the student's request for a FPAP Appeal is granted and proceed to schedule the Appeal.

62.4.5 If the Chair grants an Appeal, he or she shall forward a copy of the student's FPARF with all attachments to the respondent and the respondent's School or College Dean.

62.4.6 The Chair shall notify the student and respondent of the time, date, and location of the Appeal. The Appeal should not be scheduled less than twenty (20) university business days after the Appeal request form and attachments are sent to the respondent.

62.4.7 The respondent shall provide to the Chair and the student copies of all documents to be submitted for consideration by the FPAP. The documents shall be submitted no later than ten (10) university business days prior to the hearing. The failure to meet this deadline may result in the documents being excluded from the Appeal.

62.4.8 If, after receiving the documents of the respondent, the student wants to add additional documents to those already submitted with his/her FPARF, the student shall submit to the Chair and respondent the additional documents not less than five (5) university business days prior to the Appeal. The failure to meet this deadline shall result in the documents being excluded from the Appeal unless the respondent agrees to waive the deadline or the Chair decides the additional documents will be allowed. The additional documents the student is allowed to submit shall be limited to information that meets both of the following criteria: (1) newly discovered information that was not available when the student submitted his/her Appeal request form and (2) information that is related to the issue of whether there has been a material due process violation.

62.5 Appeal Procedures.

62.5.1 The Chair shall assemble a quorum of panelists to conduct the Appeal. A quorum consists of the chair, three (3) first professional faculty members and two (2) first professional students. On the day of the Appeal, just prior to the start of the file review, the panel may be briefed about the identity of the parties to the Appeal (student and respondent), and the general subject matter of the Appeal. However, the panel may not be given any documentary information prior to the Appeal. The panel must make its decision based solely on the information contained in the files and/or provided by the

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parties for clarification during the Appeal. The panel members shall not engage in any independent investigation outside of the Appeal nor consider any information obtained outside of the Appeal.

62.5.2 The Appeal will be conducted in a manner conducive to ascertaining the facts of the case and shall be a review of the file only. At the sole discretion of the Chair, the student or the respondent may be asked to provide information or to answer clarifying questions to assist the panel in their decision making. Neither the respondent nor the student are entitled to attend the Appeal. However, if one is asked to provide clarifying information, the other shall be present to hear that same information. The Panel will review the file and may ask clarifying questions of the student and/or the respondent.

62.5.3 If a student and/or respondent is asked clarifying questions as part of the Appeal, either or both may be accompanied at the hearing by an advisor. An advisor may not represent a party, direct questions to the Chair or panel, participate in the opening or closing statements, engage in argument, or directly question witnesses. The advisor's sole role is to provide advice and counsel to his party. The student and/or respondent are not entitled to participate in the appeal as it is a review of the file only.

62.5.4 At any time, the Chair or panel may consult with an appropriate university advisor, call or recall parties to obtain information relevant to the Appeal.

62.5.5 The Chair may establish reasonable time limitations for questioning of the parties.

62.5.6 The formal rules of evidence do not apply to FPAP proceedings. The Chair shall decide the admissibility of information and the schedule of the Appeal.

62.5.7 Appeal will be closed to the public.

62.5.8 In Appeals involving more than one student, at the sole discretion of the Chair, a single Appeal may be scheduled for all of the students. If any one of the students requests a separate Appeal and the Chair determines it is in the best interest of the students, separate Appeals may be held. When collective Appeals are held, individual findings, decisions, and recommendations will be entered by the FPAP.

62.5.9 The Chair may dismiss anyone from the Appeal, including parties or advisors, whose conduct is inappropriate or disruptive to the process. At the Chair's sole discretion, if a potential panel member cannot be a fair and impartial panelist, they may be removed.

62.5.10 The student has the burden of proof to demonstrate by a preponderance of credible information that there was a material defect in due process.

62.6 Appeal – Order of the Proceedings.

62.6.1 The Chair will begin the Appeal with opening remarks. The Chair will summarize the issues, describe the role of the FPAP, and explain the procedures to be followed.

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62.6.2 The Chair and the Panel will review the file(s) and the First Professional Appeals Panel Hearing Request Form and documents associated with this form.

62.6.3 Upon completion of the Appeal the FPAP will meet in closed session for deliberations. If the process requires additional time the FPAP may suspend its deliberations and reconvene at a later day and time. A simple majority vote of the panel is required for a final decisions. No panel member may abstain from voting. The Chair is not a voting member of the FPAP unless for some unexpected reason his/her vote is required to break a tie. There are only two possible outcomes for a FPAP Appeal: 1) a finding that there was no material defect in due process and therefore the appealed decision is affirmed, or 2) a finding that there was a material defect in due process and therefore the case is remanded back to the professional school to repair the due process defect and to render a decision.

62.7 Post-Appeal Procedures.

62.7.1 The Chair will prepare a written final decision to the student, including:

- (a) Indicating whether the appealed decision is affirmed or remanded.
- (b) Articulating the reasonable factual basis upon which the FPAP reached its conclusion.
- (c) In the case of a remand, recommendations for further actions by Professional School officials.

62.7.2 The Chair will provide the respondent, Department Head, Dean of the College offering the program and/or course, Associate Provost for Graduate and Professional Studies, and the Provost and Executive Vice President with a copy of the decision.

62.7.3 The decision by the FPAP is the final decision of the university and is not appealable to any university or system person or entity.

62.8 Reasonable Deviation from Procedures.

The Chair may reasonably deviate from the procedures detailed in this rule if the particular facts and circumstances of the matter support the change. A reasonable deviation from the procedures shall not be grounds for overturning the outcome of the Appeal process set forth in this rule.