

## **XXIV. GRADE APPEAL POLICY AND PROCEDURE**

The following policy and procedure governs all grade appeals initiated at the College of Law. This grade appeal procedure differs from the NKU “Code of Student Rights and Responsibilities” and supersedes it.

### **(a) Standard of Review**

- i. The individual professor is primarily responsible for each course or other academic activity to which he/she is assigned. As a necessary concomitant of this responsibility, the professor is the primary authority, subject to established College of Law and University rules, regulations, and policies in all matters pertaining to the course or activity. The authority includes, but is not limited to, the establishment of the criteria for grades and the evaluation of student academic performance. The grade appeal procedure outlined here is available only for the review of allegedly capricious grading in a final grade by the professor and not for routine review of the professor’s evaluation of the student’s academic performance.
- ii. A professor should not award a grade capriciously, as that term is defined below. If a final grade is found to be in whole or in part the product of capricious grading, appropriate action should be taken pursuant to this policy, sufficient to eliminate the effect of the capricious grading. Capricious grading will be found to exist only where the student establishes by clear and convincing evidence that:
  1. The assignment of a final grade to a particular student was made on some basis other than the performance in the course;
  2. The assignment of a final grade to a particular student was by resort to substantially different criteria than were applied to other students in the course;
  3. The assignment of a final grade is a substantial departure from the professor’s previously announced standards;
  4. The instructor failed to correct a clerical error after such error was brought to his/her attention;
  5. There is no reasonable relation between the grading criteria used and the material covered or assigned in the course.
- iii. Under no circumstances will there be a review of a grade, or an action taken under this policy, on the ground that:
  1. The grade does not properly reflect the quality of the student’s work;

2. There is a disagreement over a matter of judgment in the assignment of a grade;
3. The faculty member has failed to apply and meet the Grade Distribution Policies approved by the faculty;
4. The faculty member has failed to follow the Grade Definitions approved by the faculty; or
5. A grade has been affected by a decision or action not within the professor's control, including but not limited to administrative decisions concerning the scheduling of examinations and the provision of special accommodations for disabilities.

**(b) Procedure for Review and Appeal of Grades**

- i. A student who wishes to appeal a final grade must follow this grade appeal procedure. A student who does not follow this procedure may not seek relief affecting the final grade under this policy. All students, faculty, and administration are encouraged to accomplish their responsibilities under this procedure expeditiously, in the interest of completing consultation, review, and appeal of grades as soon as practicable.
- ii. No student may appeal a final grade to the administration of the College of Law unless he/she first has a preliminary meeting with the professor.
  1. A preliminary meeting over fall semester grades must take place within thirty (30) calendar days from the beginning of the following spring semester.
  2. A preliminary meeting over spring and summer semester grades must take place within thirty (30) calendar days from the beginning of the following fall semester.
  3. Each professor shall make himself or herself available for a preliminary meeting so that the above timeframe may be met, absent approval by the Associate Dean for Academics (hereinafter the Associate Dean) or the Dean for good cause shown.
  4. These time limits may be extended by the Associate Dean or the Dean where any professor's grades are submitted after the grading deadline, or where the professor is unavailable.
- iii. Before requesting review by the Associate Dean, a student raising a claim of capricious grading shall, within seven (7) calendar days after the preliminary meeting, provide the faculty member involved with a signed written statement which specifies in detail the grounds and the factual basis for the claim. A written statement is subject to the Student Honor Code. The faculty member shall, within

- seven (7) calendar days after receiving the student's signed written statement, provide the student with a written response stating his or her position on the student's claim and the factual basis for that position, and advising whether the grade will or will not be changed.
- iv. If the faculty member believes that the grade should be changed based upon any of the aforementioned grounds of appeal, the faculty member may propose to raise the grade by submitting a written explanation stating with particularity the reason for proposing to raise the grade to the Associate Dean or the Dean for his/her approval.
  - v. If the faculty member does not believe that the grade should be changed, the student and the faculty member may, at the instance of either, hold a consultation on the grade. The parties shall hold any such consultation within seven (7) calendar days after the student receives the faculty member's written statement. If the professor does not respond to the student's written statement, if there is no consultation, or if consultation between the student and the professor does not resolve the matter to the satisfaction of the student, the student may then request review by the administration of the College of Law based on any ground and factual basis for review of the grade presented to the faculty member in the student's written statement or the faculty member's written response, or raised in the consultation between the faculty member and the student.

### **(c) Request for Review by the Associate Dean**

- i. Any such request for review must be made in writing and filed with the Associate Dean, with a copy to the faculty member, no later than seven (7) calendar days after the time for the faculty member's written response has passed without such a response, the student receives the faculty member's written response, or the faculty member and the student have a final consultation, whichever is latest. A request for review is subject to the Student Honor Code as stated in paragraph f) below. The request for review must contain the following elements:
  1. The date of the request;
  2. A clear, accurate, and complete statement of the grounds for review, showing that the student is entitled to relief under the grade appeal policy;
  3. A statement of the factual basis for the claim that capricious grading has occurred, showing that the student is entitled to relief under the grade appeal policy;
  4. A certification that any grounds or factual basis raised under (2) or (3) was raised either in the student's written statement, in the faculty member's written response, or in the consultation with the faculty member;
  5. A copy of the written statement provided to the faculty member;

6. A copy of the faculty member's written response;
7. Any necessary documentation or affidavits, if appropriate, to the nature of the case; and
8. The student's signature.

If the student believes that the written statement adequately states the grounds and factual basis for the request for review, items (2) and (3) may be satisfied by a reference in the request for review incorporating the written statement. Any ground or factual basis for review or response that is outside the scope of the written statement, the written response, or the consultation may not be presented on review by either the student or the faculty member, except as provided in paragraph c) ii) below.

ii. Review by the Associate Dean

1. The Associate Dean shall consider the request for review and determine whether it contains the eight elements required by paragraph c) i). If not, the Associate Dean shall dismiss the appeal. The Associate Dean may permit the request for review or the response to be amended upon reasonable notice for good cause shown.
2. If the request for review contains the eight elements required by paragraph c) i), the Associate Dean shall consult with and receive information from the faculty member and the student, as well as any other individuals who may provide relevant information.
  - a. Any ground or factual basis for review or response that is outside the scope of the written statement, the written response, the consultation, or any amendment permitted under paragraph c) ii) (1) may not be presented to the Associate Dean by either the student or the faculty member.
  - b. The faculty member shall have a reasonable opportunity to respond to any grounds or factual basis raised in the consultation but not stated in the student's written statement.
  - c. The Associate Dean may rely on information provided anonymously for purposes of his or her investigation, which approach shall not be suggested or encouraged, but shall not rely on such information in making a determination on the request for review.
  - d. The Associate Dean may consolidate requests for review that raise the same or similar issues for purposes of this process.

- e. If the Associate Dean deems such a meeting appropriate, he/she shall meet with the faculty member and with the student, and attempt to resolve the matter.
3. If the Associate Dean cannot resolve the matter with the faculty member and the student, or does not deem a meeting appropriate, the Associate Dean shall determine, addressing all issues raised by both parties and based on the entire record before him/her, whether there is a substantial question as to whether the student's grade was the product of capricious grading. The Associate Dean shall provide a letter containing his/her determination and the results of his/her actions under paragraph c) ii) to both the student and the professor faculty member, with a copy to the Dean.

**(d) Appeal to the Dean**

- i. If the matter is not resolved to the satisfaction of the student under paragraph c) ii), the student may appeal to the Dean. An appeal is subject to the Student Honor Code as stated in paragraph f) below.
  1. Any such appeal must be made in writing and filed with the Dean with copies to the faculty member and to the Associate Dean no later than seven (7) calendar days after the student receives the Associate Dean's letter under paragraph c) ii) (3) above.
  2. The appeal shall contain a statement that the student wishes to appeal, and a request that the Associate Dean transmit the entire record to the Dean.
  3. The appeal shall be limited to any ground for review and factual basis presented to the Associate Dean. Any ground or factual basis for appeal or response that is outside the scope of the written statement, the written response, or the consultation; or in an amendment to the request for review or the response permitted by the Associate Dean under paragraph c) ii) (1), may not be presented by amendment or otherwise to the Dean by either the student or the faculty member.
- ii. The Associate Dean shall transmit the entire record to the Dean, and, before proceeding, the Dean shall ascertain that he/she has received the entire record.
  1. The record shall consist of every filing by any party, the Associate Dean's letter under paragraph c) ii) (3), and any other communication involving the parties, a list of the names of all individuals who provided or were said to have information relating to the proceedings (other than individuals who speak only on condition of anonymity), and any documents or witness statements relating or referring to any fact related to the grade appeal within the Associate Dean's possession in connection with the proceeding.

2. Such matters shall be included in the record whether or not the Associate Dean has relied upon or referred to any such matter in his or her investigation or determination. The Associate Dean may exclude from the record any portion of any document that consists solely of his or her thought processes or mental impressions or the products of mediation, but shall include the remaining portions of any such document.
- iii. If the Associate Dean has not already so found, the Dean shall first determine based on the entire record whether there is a substantial question as to whether the student's grade was the product of capricious grading.
1. The Dean shall accord substantial deference to the Associate Dean's determination, if any, that there is no substantial question as to whether the student's grade was the product of capricious grading.
  2. The Dean may consolidate appeals that raise the same or similar issues for purposes of this process if the Associate Dean has not already consolidated the requests for review, or may sever appeals for separate proceedings.
  3. If the Dean finds that the Associate Dean has not properly or completely determined the request for review, the Dean shall either send the appeal back to the Associate Dean for further action, perform the function of the Associate Dean under paragraph c) ii), or refer the matter to a standing or ad hoc committee as provided in paragraph v) below.
- iv. If neither the Associate Dean nor the Dean has found, based on the entire record, that there is a substantial question as to whether the student's grade was the product of capricious grading, the appeal shall be dismissed.
- v. If the Associate Dean or the Dean has found, based on the entire record, that there is a substantial question as to whether the student's grade was the product of capricious grading, the Dean may consult with the faculty member in an attempt to resolve the matter, and if the matter is not resolved thereby, shall refer the appeal to an ad hoc committee or any standing committee whose jurisdiction includes grade appeals, to make a decision on the facts and to advise him/her on the matter.
1. If the Dean refers the appeal to an ad hoc committee, the membership of that committee shall be determined at random from among the tenured faculty.
  2. The student or the faculty member may challenge any committee member for cause by filing a challenge with the Dean, with copy to the faculty member and to the committee member. Any committee member may recuse himself/herself for good cause as determined by

that faculty member, which should be done as soon as practicable. The Dean shall advise the committee, the student, and the faculty member of any disqualification or recusal, and of the name of the replacement faculty member.

3. The reference and all other communications between the Dean and the committee or any of its members shall be in writing, on the record, and copied to the faculty member and the student.
  4. There shall be no ex parte communications between the Dean on the one hand and the committee to which the appeal is referred or any member thereof on the other.
- vi. The committee shall conduct an informal hearing in order to make factual findings.
1. The committee may consolidate appeals raising the same or similar issues for purposes of the hearing if the Associate Dean or the Dean has not already done so.
  2. There shall be no ex parte communications between the committee on the one hand and the faculty member or the student on the other.
  3. At the hearing, the student and faculty member shall be given the opportunity to be present, to address the committee, to present and examine witnesses, and to present documents.
  4. The chair of the committee shall arrange for and manage the hearing in consultation with the other members of the committee.
  5. The committee shall not be bound by the rules of evidence, but may receive any information that it reasonably believes has probative value on the issues presented on the appeal. If the committee is inclined to take official notice of any fact or principle, it shall advise the parties of that inclination so that the parties may have an opportunity to address the fact or principle and how it should be determined.
  6. Neither the student nor the faculty member may have counsel present.
- vii. The committee shall report its findings of fact, conclusions as to whether capricious grading has occurred and on what grounds, and recommendations in writing to the Dean within ten days after the hearing has been concluded. The committee shall not substitute its professional judgment for that of the faculty member in assigning the grade, but shall base its decision on the criteria for capricious grading state in paragraph a) ii) above. The committee shall provide a copy of the report to the faculty member and the student at the time that it is provided to the Dean.

viii. The Dean shall fully consider the committee's report, and shall be bound by the committee's findings of fact. The Dean shall not substitute his or her professional judgment for that of the faculty member in assigning the grade, but shall base his or her decision on the criteria for capricious grading stated in paragraph a) ii) above. If the Dean disagrees with the committee's conclusions or recommendations, the Dean shall memorialize the reasons for his/her disagreement in writing. If after full consideration of the matter, and based solely on the entire record before the committee, the Dean concludes that the grade was the product of capricious grading, he/she may provide the student with whatever change in the grade the Dean deems appropriate to eliminate the effect of the capricious grading. Otherwise the Dean shall dismiss the appeal.

**(e) Further Limited Appeal to the Provost**

- i. The written determination by the Dean shall be final. However, the student or faculty member may appeal an adverse determination to the Provost on the ground that any of the above procedures were not complied with and that the appealing party was prejudiced by that non-compliance. Any such appeal to the Provost shall state with particularity the procedural irregularity and the prejudice caused thereby, and must be filed with the Provost within seven (7) calendar days after the appealing party's receipt of the Dean's final determination under paragraph d) vii) and ix) above. An appeal to the Provost is subject to the Student Honor Code as stated in paragraph f) below.
- ii. If the Provost finds that any of the above procedures were not complied with and that the appealing party was prejudiced by that non-compliance, the Provost shall describe the noncompliance and prejudice, and the matter shall be returned to the Dean for disposition consistent with these procedures and the Provost's written opinion.

**(f) Relationship of Grade Appeal Policy and Procedure, and Chase Student Honor Code or Other NKU or Faculty Policies**

- i. Academic misconduct involving a grade appeal may involve a violation of section II.B.1.i of the Student Honor Code. Situations that may involve both this grade appeal policy and the Student Honor Code shall be handled as follows.
  1. If the Dean or the Associate Dean has substantial cause to believe that any grade appeal may consist of or may be based on any fraudulent, deceptive, knowingly false or misleading, or other dishonest action or inaction, the grade appeal may be stayed pending a referral of the alleged action or inaction under the Student Honor Code.
  2. If such cause exists, subject to section II.D.1 of the Student Honor Code pertaining to professional judgment,

- a. The Dean may, and where he or she has actual knowledge of a violation, shall refer any such matter to the Associate Dean under section II.D.1 of the Student Honor Code;
  - b. The Associate Dean may, and if he or she has actual knowledge of a violation, shall refer any such matter to the Dean with a request for appointment of a substitute faculty member under section II.D.5. of the Student Honor Code; or
  - c. The chair or any member of the hearing committee should ordinarily consult with the Associate Dean before action is taken, and any referral under section II.D.1. of the Honor Code made before all proceedings have been completed should be made only after consultation with the Associate Dean.
3. Subject to paragraph d) ii) (3) above, any such referral shall be made at the time the proceeding is stayed, or if there is no stay, then at any time during the proceedings, and at the latest promptly upon the completion of all proceedings on the grade appeal. The continued maintenance of a grade appeal may be found to constitute a violation for purposes of section II.C.1. of the Student Honor Code.
- ii. Faculty conduct involving grading or in connection with any proceeding under this grade appeal policy that raises issues covered by another policy or procedure of Northern Kentucky University or the College of Law shall be handled according to such other policy or procedure.