

Department of Kinesiology

Michigan State University

Academic Hearing Procedures for the Department of Kinesiology

Each right of an individual places a reciprocal duty upon others: the duty to permit the individual to exercise the right. The student, as a member of the academic community, has both rights and duties. Within that community, the student's most essential right is the right to learn. The University has a duty to provide for the student those privileges, opportunities, and protections which best promote the learning process in all its aspects. The student also has duties to other members of the academic community, the most important of which is to refrain from interference with those rights of other which are equally essential to the purposes and processes of the University. (AFR Article 1.)

The *Academic Freedom for Students at Michigan State University (AFR)* and the *Graduate Student Rights and Responsibilities (GSRR)* documents establish the rights and responsibilities of MSU students and prescribe procedures for resolving allegations of violations of those rights through formal grievance hearings. In accordance with the AFR and the GSRR, the Department of Kinesiology has established the following Hearing Board procedures for adjudicating academic grievances and complaints. (See AFR Article 6 and 7; GSRR 5.4.1.)

I. JURISDICTION OF THE DEPARTMENT OF KINESIOLOGY HEARING BOARD:

- A. The Hearing Board serves as the initial Hearing Board for academic grievance hearings involving graduate and undergraduate students who allege violations of academic rights and graduate students seeking to contest an allegation of academic misconduct (academic dishonesty, violations of professional standards or falsifying admission and academic records). (See AFR 6.I.A and 7.I.B; GSRR 2.3.9 and 5.1.1.)
- B. Students may not request an academic grievance hearing based on an allegation of incompetent instruction. (AFR 2.II.A-D; GSRR 2.2.2 and 2.2.4.)

II. COMPOSITION OF THE HEARING BOARD:

- A. The Department shall constitute a Hearing Board pool no later than the end of the tenth week of the spring semester. The faculty pool consists of all regular faculty members from the Department of Kinesiology, the undergraduate pool includes 8 persons identified by the Undergraduate Studies Committee and the graduate pool includes 8 members identified by the Graduate Studies Committee.
- B. The Hearing Board members will be selected by the Department Chair based on recommendations identified within the appropriate member pools by the FAC.
- C. For hearings involving graduate students, the Chair of the Hearing Board shall be the faculty member with rank, who shall vote only in the event of a tie. In addition to the Chair, the Hearing Board shall include an equal number of voting graduate students and faculty, including the unit administrator, or designee. (See GSRR 5.1.2, and 5.1.5.)
- D. For hearings involving undergraduate students, the Chair of the Hearing Board shall be the member with rank, who shall vote only in the event of a tie. In addition to the Chair, the Hearing Board shall include an equal number of voting undergraduate students and faculty. (See AFR 6.I.B.C)
- E. The Department will train hearing board members about these procedures and the applicable sections of the AFR and GSRR. (See AFR 7.IV.C; GSRR 5.1.3.)

III. REFERRAL TO HEARING BOARD:

- A. After consulting with the instructor and appropriate unit administrator, undergraduate or graduate students who remain dissatisfied with their attempt to resolve an allegation of a

violation of student academic rights may request an academic grievance hearing. When appropriate, the Department Chair, in consultation with the Dean, may waive jurisdiction and refer the request for a hearing to the College Hearing Board. At any time in the grievance process, students may consult with the University Ombudsperson. (See AFR 7.III.A, 7.IV.H; GSRR 5.3.)

- B. After consulting with the instructor and appropriate unit administrator, graduate students who remain dissatisfied with their attempt to resolve an allegation of a violation of academic misconduct (academic dishonesty, violations of professional standards or falsifying admission and academic records) may request an academic grievance hearing. When appropriate, the Department Chair, in consultation with the Dean, may waive jurisdiction and refer the request for a hearing to the College Hearing Board. At any time in the grievance process, students may consult with the University Ombudsperson. (See AFR 7.III.A, 7.IV.H; GSRR 5.3.)
- C. In cases of ambiguous jurisdiction, the Associate Provost for Undergraduate Education will select the appropriate Hearing Board for hearings involving undergraduate students, and the Dean of The Graduate School will select the appropriate Hearing Board for cases involving graduate students. (See AFR 7.III.B; GSRR 5.3.)
- D. Generally, the deadline for submitting the written request for a hearing is the middle of the next semester in which the student is enrolled (including summer). If either the student (the complainant) or the respondent (usually, the instructor or an administrator) is absent from the university during that semester, or if other appropriate reasons emerge, the Hearing Board may grant an extension of this deadline. If the university no longer employs the respondent before the grievance hearing commences, the hearing may still proceed. (See AFR 7.III.C; GSRR 5.3.6.1.)
- E. A written request for an academic grievance hearing must (1) specify the specific bases for the grievance, including the alleged violation(s) of the AFR or GSRR, (2) identify the individual against whom the grievance is filed (the respondent) and (3) state the desired redress. Anonymous grievances will not be accepted. (See AFR 7.III.B and C, AFR footnote 35.)

IV. PRE-HEARING PROCEDURES

- A. After receiving a student's written request for a hearing, the Chair of the Department will promptly refer the grievance to the Chair of the Hearing Board. (See AFR 7.IV.D.1; GSRR 5.3.2, 5.4.3.)
- B. Within **5** class days, the Chair of the Hearing Board will:
 1. forward the request for a hearing to the respondent;
 2. send the names of the pool of Hearing Board members to both parties and, to avoid conflicts of interest between the two parties and the Hearing Board members, request written challenges, if any, within **3** class days of this notification;
 3. rule promptly on any challenges, impanel a Hearing Board and send each party the names of the Hearing Board members. If the Chair of the Hearing Board is the subject of a challenge, the challenge shall be filed with the Chair of the Department (see AFR 7.IV.D; GSRR 5.1.7.); and
 4. send the Hearing Board members a copy of the request for a hearing and the written response, and send all parties a copy of these procedures.
- C. Within **5** class days of being established, the Hearing Board shall review the request, and, after considering all requested and submitted information:
 1. accept the request, in full or in part, and promptly schedule a hearing.

2. reject the request and provide a written explanation to appropriate parties; e.g., lack of jurisdiction. (The student may appeal this decision.)
 3. invite the two parties to meet with the Hearing Board in an informal session to try to resolve the matter. (Such a meeting does not preclude a later hearing.) (See AFR 7.IV.D.4 and AFR footnote 35; GSRR 5.4.6.)
- D. If the Hearing Board calls for a hearing, the Chair of the Hearing Board shall promptly negotiate a hearing date, schedule an additional meeting only for the Hearing Board should additional deliberations on the findings become necessary, and request a written response to the grievance from the respondent.
- E. At least **5** class days before the scheduled hearing, the Chair of the Hearing Board shall notify the respondent and the complainant in writing of the (1) time, date, and place of the hearing; (2) the names of the parties to the grievance; (3) a copy of the hearing request and the respondent's reply; and (4) the names of the Hearing Board members after any challenges. (See AFR 7.IV.D.5; GSRR 5.4.7.)
- F. At least **3** class days before the scheduled hearing, the parties must notify the Chair of the Hearing Board the names of their witnesses and advisor, if any, and request permission for the advisor to have voice at the hearing. The chair may grant or deny this request. The Chair will promptly forward the names given by the complainant to the respondent and visa versa. (See AFR 7.IV.D.6; GSRR 5.4.7.1.)
- G. The Chair of the Hearing Board may accept written statements from either party's witnesses at least **3** class days before the hearing. (See AFR 7.IV.D.10.)
- H. In unusual circumstances and in lieu of a personal appearance, either party may request permission to submit a written statement to the Hearing Board or request permission to participate in the hearing through an electronic communication channel. Written statements must be submitted to the Hearing Board at least **3** class days before the scheduled hearing. (See AFR 7.IV.D.9; GSRR 5.4.9c.)
- I. Either party to the grievance hearing may request a postponement of the hearing. The Hearing Board may either grant or deny the request. (See AFR 7.IV.D.8; GSRR 5.4.8.)
- J. At its discretion, the Hearing Board may set a reasonable time limit for each party to present its case, and the Chair of the Hearing Board must inform the parties of such a time limit in the written notification of the hearing.
- K. Hearings are closed unless the student requests an open hearing, which would be open to all members of the MSU community. The Hearing Board may close an open hearing to protect the confidentiality of information or to maintain order. (See AFR 7.IV.D.13; GSRR 5.4.10.4.)
- L. Members of the Hearing Board are expected to respect the confidentiality of the hearing process. (AFR 7.IV.D.13, 7.IV.F.)

IV. HEARING PROCEDURES:

- A. The Hearing will proceed as follows:
1. Introductory remarks by the Chair of the Hearing Board: The Chair of the Hearing Board introduces hearing panel members, the complainant, the respondent and advisors, if any. The Chair reviews the hearing procedures, including announced time restraints for presentations by each party and the witnesses, and informs the parties if their advisors may have a voice in the hearings and if the proceedings are being recorded. Witnesses shall be excluded from the proceedings except when testifying. The Chair also explains:
 - In academic grievance hearings in which a student alleges a violation of academic rights, the student bears the burden of proof.

- In hearings involving graduate students seeking to contest allegations of academic misconduct, the instructor bears the burden of proof.
- All Hearing Board decisions must be reached by a majority of the Hearing Board, based on a "preponderance of the evidence."

(See AFR 7.IV.D.14, Footnote 37; GSRR 5.4.10.1. For various definitions, see AFR Article 11 and GSRR Article 8.)

2. If the complainant fails to appear in person or via an electronic channel at a scheduled hearing, the Hearing Board may either postpone the hearing or dismiss the case for demonstrated cause. (See AFR 7.IV.D.11; GSRR 5.4.9a.)
3. If the respondent fails to appear in person or via an electronic channel at a scheduled hearing, the Hearing Board may postpone the hearing, hear the case in the respondent's absence, or dismiss the case. (See AFR 7.IV.D.11; GSRR 5.4.9-b.)
4. If the respondent is absent from the University during the semester of the grievance hearing or no longer employed by the University before the grievance procedure concludes, the hearing process may still proceed. (See AFR 7.III.C; GSRR 5.3.6.1.)
5. To assure orderly questioning, the Chair of the Hearing Board will recognize individuals before they speak. All parties have a right to speak without interruption. Each party has a right to question the other party and to rebut any oral or written statements submitted to the Hearing Board. (See AFR 7.IV.D.16; GSRR 5.4.10.2.)
6. Presentation by the Complainant: The Chair recognizes the complainant to present without interruption any statements relevant to the complainant's case, including the redress sought. The Chair then recognizes questions directed at the complainant by the Hearing Board, the respondent and the respondent's advisor, if any.
7. Presentation by the Complainant's Witnesses: The Chair recognizes the complainant's witnesses, if any, to present, without interruption, any statement directly relevant to the complainant's case. The Chair then recognizes questions directed at the witnesses by the Hearing Board, the respondent, and the respondent's advisor, if any.
8. Presentation by the Respondent: The Chair recognizes the respondent to present without interruption any statements relevant to the respondent's case. The Chair then recognizes questions directed at the respondent by the Hearing Board, the complainant, and the complainant's advisor, if any.
9. Presentation by the Respondent's Witnesses: The Chair recognizes the respondent's witnesses, if any, to present, without interruption, and statement directly relevant to the respondent's case. The Chair then recognizes questions directed at the witnesses by the Hearing Board, the complainant, and the complainant's advisor, if any.
10. Rebuttal and Closing Statement by Complainant: The complainant refutes statements by the respondent, the respondent's witnesses and advisor, if any, and presents a final summary statement.
11. Rebuttal and Closing Statement by Respondent: The respondent refutes statements by the complainant, the complainant's witnesses and advisor, if any, and presents a final summary statement.
12. Final questions by the Hearing Board: The Hearing Board asks questions of any of the participants in the hearing.

VI. POST-HEARING PROCEDURES

A. Deliberation:

After all evidence has been presented, with full opportunity for explanations, questions and rebuttal, the Chair of the Hearing Board shall excuse all parties to the grievance and convene

the Hearing Board to determine its findings in executive session. When possible, deliberations should take place directly following the hearing and/or at the previously scheduled follow-up meeting. (See Section **IV.D** above.)

B. Decision:

1. In grievance (non-disciplinary) hearings involving undergraduate and graduate students in which a majority of the Hearing Board finds, based on a "preponderance of the evidence," that a violation of the student's academic rights has occurred and that redress is possible, it shall recommend an appropriate remedy to the Department Chair. Upon receiving the Hearing Board's recommendation, the Director shall implement an appropriate remedy, in consultation with the Hearing Board, within **3** class days. If the Hearing Board finds that no violation of academic rights has occurred, it shall so inform the Chair. The Chair of the Hearing Board shall promptly forward copies of the final decision to parties and the University Ombudsman. (See AFR 7.IV.D and E; GSRR 5.4.11.)
2. In grievance (non-disciplinary) hearings involving graduate students in which the Hearing Board serves as the initial hearing body to adjudicate an allegation of academic dishonesty and, based on a "preponderance of the evidence," the Hearing Board finds for the student, the Hearing Board shall recommend to the Chair of the Department that the penalty grade be removed, the Academic Dishonesty Report be removed from the student's records and a "good faith judgment" of the student's academic performance in the course take place. If the Hearing Board finds for the complainant (instructor), the penalty grade shall stand and the Academic Dishonesty Report regarding the allegation will remain on file, pending an appeal, if any to the College Hearing Board within **5** class days of the Hearing Board's decision. If an academic disciplinary hearing is pending, and the Hearing Board decides for the complainant, the graduate student's disciplinary hearing before either the College Hearing Board or the Dean of The Graduate School would promptly follow, pending an appeal, if any, within **5** class days. (See GSRR 5.4.12.3 and 5.5.2.2.)

C. Written Report:

The Chair of the Hearing Board shall prepare a written report of the Hearing Board's findings, including redress for the complainant, if applicable, or sanctions, if applicable, and forward a copy of the decision to the appropriate unit administrator within **3** class days of the hearing. The report shall indicate the rationale for the decision and the major elements of evidence, or lack thereof, that support the Hearing Board's decision. The report also should inform the parties of the right to appeal within **5** class days following notice of the decision. The Chair shall forward copies to the parties involved, the responsible administrators, the University Ombudsperson and, in hearings involving graduate students, the Dean of The Graduate School. All recipients must respect the confidentiality of the report and of the hearing board's deliberations resulting in a decision. (See AFR 7.IV.E & F; GSRR 5.4.11.)

VII. APPEAL OF THE HEARING BOARD DECISION:

- A. In hearings involving undergraduate students, either party may appeal the decision of the Hearing Board to the University Academic Appeal Board in cases involving academic grievances alleging violations of student rights. (See AFR 6.IV.A and 7.VII.)
- B. In hearings involving graduate students, either party may appeal a decision by the Hearing Board to the College Hearing Board for cases involving (1) academic grievances alleging violations of student rights heard initially by the Hearing Board and (2) alleged violations of regulations involving academic misconduct (academic dishonesty, professional standards or falsification of admission and academic records). (See GSRR 5.4.12.)
- C. All appeals must be in writing, signed and submitted to the Chair of either the University Academic Appeal Board or the College Hearing Board within **5** class days following notification of the Hearing Board's decision. While under appeal, the original decision of the

Hearing Board will be held in abeyance. (See AFR 7.VII.A; GSRR 5.4.12, 5.4.12.2 and 5.4.12.3.)

- D. A request for an appeal of a Hearing Board decision to either the University Academic Appeal Board or the College Hearing Board must allege, in sufficient particularity to justify a hearing, that the Hearing Board failed to follow applicable procedures for adjudicating the hearing or that findings of the Hearing Board were not supported by the "preponderance of the evidence." The request also must include the redress sought. The appellate board normally will not allow the presentation of new evidence.. (See AFR 7.VII.A and B; GSRR 5.4.12.1, 5.4.12.2 and 5.4.12.4.)

VIII. RECONSIDERATION:

If new evidence should arise, either party to a hearing may request the Hearing Board to reconsider the case within **30** days upon receipt of the hearing outcome. The written request for reconsideration is to be sent to the Chair of the Hearing Board, who shall promptly convene the Hearing Board to review the new material and render a decision on a new hearing. (See AFR 7.IV.G; GSRR 5.4.13.)

IX. FILE COPY:

The Chair of the Department will file copies of these procedures with the Office of the Ombudsperson and the Dean of The Graduate School. (See AFR 7.IV.A; GSRR 5.4.1.)

Approved by Department of Kinesiology Faculty (February 17, 2012)