

Appeals and Appearances Before the Board

POLICIES

Issued: June 7, 2019

Responsible Official: General Counsel

Responsible Office: Office of Legal Affairs

Policy Statement

It is the policy of Austin Peay State University to allow a student or employee to appeal certain decisions of the president to the Board of Trustees (“Board”).

Purpose

The purpose of this policy is to set the conditions and procedures for appeals to the Board and for appearances before the Board.

Procedures

General

- A. A student or employee of Austin Peay State University may appeal certain decisions of the president to the Board.
- B. Appeals heard pursuant to the TN Uniform Administrative Procedures Act (UAPA), as outlined in APSU Policy 1:007, are not appealable to the Board.
- C. Appeals to the Board shall be limited to alleged violations of state or federal law or university policy where the complainant has not filed a federal/state administrative appeal or lawsuit in state or federal court.
- D. If, at any time during the pendency of the appeal, a complainant files a lawsuit or administrative action based on the same subject matter as the appeal, the appeal will be dismissed without further action.
- E. Unless there is a violation of state or federal law under the limitations described above, decisions which are not appealable to the Board shall include, but not be limited to:

1. Termination of executive, administrative, professional, clerical and support employees during or at the end of the initial probationary period or pursuant to the terms of the contract of employment;
 2. Non-renewal of a tenure-track faculty appointment during the first five years of the probationary period;
 3. Denial of early tenure unaccompanied by notice of termination in the fifth year of the probationary period;
 4. Non-renewal of a temporary faculty appointment;
 5. Faculty promotions;
 6. Salary determinations;
 7. Student academic matters, e.g. grade appeals, failure to meet retention policies, etc.;
 8. Performance evaluations of faculty and staff; and
 9. Residency classification of student for tuition and fee purposes.
- F. Any available university complaint procedure must be exhausted prior to consideration by the Board.
- G. Complaints from students or prospective students regarding accreditation or violation of state or federal laws may be submitted to the President's office for appropriate review and action, as required by 34 C.F.R. 600.9(a)1.

Appeals to the Board

- A. An employee who is dissatisfied with the decision of the President on his or her appeal may petition the Board of Trustees for permission to appeal the decision to the Board.
- B. The petition must be submitted in writing to the Secretary of the Board within 20 calendar days following the President's written decision.
- C. The petition for appeal must present:
1. A brief statement of the issues to be reviewed including a statement of the redress desired;
 2. A brief statement of the facts relevant to the issues to be reviewed, with appropriate reference to where such can be found in the record;
 3. A statement of applicable law/policy
 4. A brief argument; and
 5. Citations of any applicable authorities, (such as policies, statutes, and cases.)

- D. The petition for appeal must be limited to ten (10) pages, typed, doubled spaced, and on 8 ½ X 11” paper.
- E. The appropriate standing committee of the Board shall review the decision of the President on the basis of the record submitted to the Board, with any new evidence which for good cause shown was not previously considered, and determine whether the petition to appeal will be granted.
- F. A committee of the Board, in determining whether to grant an appeal, may consider the following:
 - 1. Whether Board policy or procedures have been followed;
 - 2. Whether or not there is material evidence to substantiate the decision appealed from; and/or
 - 3. Whether or not there has been a material error in application of the law, which prima facie results in substantial injustice.

The listing in 1 – 3 above is exhaustive and, in the decision of the Board committee. Other considerations may be taken into account.
- G. If the petition to appeal is granted, the committee shall hear the appeal at a subsequent regularly scheduled meeting of the committee and may request the person appealing to appear and present arguments on his or her behalf.
- H. The committee shall recommend action on the appeal to the Board of Trustees. The decision of the Board shall be final and binding for all purposes.

Record

- A. The record on an appeal to the Board shall consist of all relevant documents, statements, and other materials submitted by the person appealing and by the President of Austin Peay State University.
- B. In the event that the person appealing does not submit sufficient information to allow review of the decision being appealed, the Board may require the person appealing to furnish any additional information which may be necessary.

Standard of Review

- A. The following provisions shall govern the review by the Board of an appeal under this policy:
 - 1. A decision may be remanded for further consideration upon a finding that it was not made in accordance with applicable statute or federal law or university

- procedures; provided, however that the decision should not be remanded if the procedural error was not material to the decision and therefore constituted harmless error;
2. A decision may be modified or reversed only upon a finding that the decision constituted an abuse of discretion or was made in violation of applicable state or federal law or university policies; provided, however, that the decision should not be modified or reversed if the violation of policy was not material to the decision and therefore constituted harmless error
 3. A decision should be affirmed in the absence of a finding of abuse of discretion or material violation of applicable state or federal law or university policies or procedures.
- B. Notwithstanding any provision herein to the contrary, any decision may be remanded by the Board for a resolution of the matter which is mutually acceptable to the parties or which is, in the best judgement of the board, a fair and equitable resolution.

**Appearances before the
Board on Non-Appealable
Issues**

Public Participation

Members of the public are allowed to appear before the Board of Trustees to comment on any topic listed on the agenda for a Board meeting that is open to the public. Testimony will be limited to topics listed on the agenda. Members of the public wishing to present shall provide their name and agenda topic they wish to address to APSU General Counsel and Secretary to the Board of Trustees at least 72 hours in advance of the meeting (trustees@apsu.edu). The Chair, in his or her discretion, may allow individuals to address the Board without advance notice.

If possible, members of the public who wish to appear before the Board shall provide a brief written statement of the substance of such person's testimony to APSU General Counsel and Secretary to the Board of Trustees in sufficient time for copies to be distributed to the Trustees prior to the meeting.

When applicable, the Chair, in consultation with the committee chair and Secretary to the Board, will determine whether the comment(s) will be made during the meeting of the relevant committee or the meeting of the full Board. Notwithstanding, the Chairman of the Board may authorize appearances before the

Board on any matter deemed appropriate for Board consideration.

Time Allocation

A person addressing the Board will have a maximum of 3 minutes for any comments. Exceptions to this time period will only be allowed at the discretion of the Board Chair.

The aggregated time for all public comments at a meeting will not exceed 15 minutes in total.

Revision Dates

APSU Policy 1:010 – Rev.: June 7, 2019
APSU Policy 1:010 – Rev.: March 15, 2019
APSU Policy 1:010 – Rev.: June 8, 2018
APSU Policy 1:010 – Issued: March 30, 2017

Subject Areas:

Academic	Finance	General	Human Resources	Information Technology	Student Affairs
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Approved

President: signature on file
