

## **AR 4313 Grade Appeals Committee**

(new number will be AR 4213)

### **Basis for Grade Appeal**

Under California Education Code, Section 76224(a), a grade given to a student shall be the grade determined by the instructor of the course, and in the absence of mistake, fraud, bad faith, or incompetency, shall be final. For the purpose of a grade appeal, the following definitions apply:

- **Bad faith:** *The opposite of “good faith,” generally implying or involving actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfill some duty or some contractual obligation, not prompted by an honest mistake as to one’s rights or duties, but by some interested or sinister motive.*
- **Fraud:** *Fraud consists of some deceitful practice or willful device, resorted to with intent to deprive another of his/her right, or in some manner to do him/her an injury.*
- **Incompetence:** *Lack of ability, inefficient and without the qualities needed to discharge one’s obligations and duties.*
- **Mistake:** *Some unintentional act, omission, or error arising from ignorance, surprise, imposition, or misplaced confidence.*

### **Criteria for Eligibility**

- The student may not concurrently be enrolled in a course they are appealing.
- The student must not have subsequently repeated the course being appealed.

### **The Role of the College Ombudsperson in the Grade Appeal Process**

1. Prior to filing a formal grade appeal petition, the student must meet with the college ombudsperson to discuss a potential appeal. The ombudsperson will serve as a source of information, assistance, and referral. The ombudsperson’s role is to encourage informal conciliation in the grading dispute between the student and the instructor. The ombudsperson will confer with the instructor of the course as needed. The ombudsperson is a neutral party and does not take part in the formal grade appeal process.
2. If the instructor of the course is unavailable or otherwise unresponsive, the ombudsperson will confer with the appropriate department chair, who will contact the instructor. In the event the department chair determines that the instructor is indefinitely unavailable (deceased, no forwarding address and/or failure to reply to written communication), the department chair (or designee) has the authority to act on the instructor’s behalf. The ombudsperson will inform the student of this action.
3. If after conferring with the Ombudsperson, an informal resolution satisfactory to the student is not reached, and the filing deadline for a grade appeal has not elapsed, the student may initiate the formal grade appeal process noted below.

### **Initiating the Formal Grade Appeal Process**

1. To start the formal Grade Appeal process, the student must complete and submit a Grade Appeal Petition form to the Dean of Enrollment Services office.
  - a. The filing deadlines are:
    - i. For courses taken in Summer— November 30
    - ii. For courses taken in Fall— April 30
    - iii. For courses taken in Winter—May 30
    - iv. For courses taken in Spring—October 30
    - v.
  - b. Failure to submit the petition by the deadline to the Dean’s office will terminate the grade appeal process. Extensions will not be given under any circumstances

2. The formal grade appeal petition must contain a written statement of the grounds for appeal, (i.e., whether the grade was given by mistake, fraud, bad faith, or incompetence of the instructor. Dissatisfaction with a grade is not a reason for appeal. . The student must include any supporting documentation desired, including but not limited to signed witness affidavits (subject to authentication), email communications, exams, or assignments at this time. Students will not be permitted to submit additional documentation at any other time.
3. The grade appeal petition shall provide for a response by the faculty member involved, the department chair, and the Vice President of Academic Affairs. The instructor or department chair may include any supporting documentation desired, including but not limited to signed witness affidavits (subject to authentication), email communications, exams, or assignments at this time.
4. After all parties have provided a response to the student's appeal by the specified deadline, the student shall meet with the Dean of Enrollment Services or designee to review the completed file. The student must decide at this time if he/she wishes to proceed with a hearing before the Grade Appeal Committee.
  - a. If the student does not wish to proceed, the grade appeal will cease and the case will be closed. The grade given by the instructor will remain in effect.
  - b. If the student wishes to proceed, the hearing shall be held as soon as feasible, based on the Committee's availability and the queuing of the student's grade appeal request.
5. The Dean of Enrollment Services office will notify all parties once the hearing date has been scheduled. Hearings are only held during the Fall and Spring semesters, and are scheduled on a "first filed, first heard basis."

In preparation for the Grade Appeal hearing, students with disabilities may request any accommodations to which they may be entitled under the Americans with Disabilities Act. Students must request these accommodations through Disabled Student Programs and Services (DSPS) in a timely manner so the necessary arrangements may be made.

#### **Grade Appeal Committee Membership, Quorum, and Authority**

1. The Grade Appeal Committee shall consist of:
  - a. Three (3) students appointed by the Associated Students President.
  - b. Three (3) faculty members appointed by the Academic Senate President.
  - c. One (1) academic manager appointed by the Superintendent/President (or designee) who shall serve as the Committee chair.
  - d. The Dean of Enrollment Services or designee acting as the Committee's moderator, who shall not have voting privileges.
2. Quorum
 

Five (5) of the seven (7) members constitute a quorum, and at least one (1) academic manager, two (2) students, and two (2) faculty members must be included in the quorum. Committee decisions will be determined by a majority vote of those present
3. Authority
 

The Grade Appeal Committee is empowered with the authority to:

  - a. Review and question all materials presented for its consideration.
  - b. Question the student and the instructor during the hearing.
  - c. Proceed with the hearing in the event that either the student or the instructor does not appear as scheduled because of a documented extenuating circumstance. Once scheduled, hearings will not be postponed.
  - d. Render decisions based upon the testimony given by the party present and the materials previously submitted by the party not in attendance.
  - e. Go into closed session to deliberate.

- f. Issue written comments or recommendations to the student and/or faculty, where relevant, and refer either party to other College resources as needed. Such recommendations are not binding, but represent suggestions the Committee believes will avoid future misunderstandings with respect to grading. Recommendations issued to the faculty member shall not be forwarded to the student and do not constitute a student record.
4. Committee Findings
    - a. In deciding if a grade change is warranted, the Grade Appeal Committee must first decide if the student met the burden of proof for the basis of the appeal: instructor mistake, fraud, bad faith, incompetence (as noted on the petition).
      - i. If the Committee concludes the basis of the appeal was not supported by a preponderance of the evidence presented, the grade issued by the instructor will remain in effect.
      - ii. If the Committee concludes the basis of the appeal was supported by a preponderance of the evidence presented, the Committee will then deliberate if a grade change for the course is warranted. Based upon this deliberation, the Committee may issue the following findings: (1) a grade change is not warranted; (2) change the grade issued by the instructor to a specific grade.

### **The Hearing**

1. The student and all parties to the appeal shall be given not less than ten (10) calendar days' notice of the time and place of the hearing, unless both parties agree to an earlier deadline.
2. Grade Appeal Committee members must notify the Chair of potential conflicts of interest and are strongly encouraged to recuse themselves from proceedings and deliberations.
3. The student may bring counsel or other representatives to the hearing. These individuals may not participate in the proceedings, unless the representatives serve as witnesses. Counsel participation will terminate the hearing. Students are required to notify the College of counsel/guest(s) presence to these proceedings no less than 48 hours prior to the scheduled hearing.
4. Each party shall have the right to present the written statements previously submitted with the petition and witnesses named in the petition, if appropriate. Parties will not be permitted to introduce new evidence at the hearing.
5. Each party shall have the right to question evidence, witnesses, and supporting documents within their allotted time during the hearing.
6. The student filing the appeal will bear the burden of proof and must demonstrate through the evidence presented that the grade was issued as a result of instructor mistake, fraud, bath faith, or incompetence.
7. The Grade Appeal Committee hearings shall be closed to the public. Any materials related to the hearing, including electronic recordings of the proceedings, may not be released to the student requesting the grade appeal or to any other individual or group. With the exception of the Dean of Enrollment Services (or designee), no other party present at the hearing may record the proceedings in any manner. Violators will be removed from the hearing, which may proceed without the removed individuals. Violators will be reported to the proper College body for further action.
8. In accordance with the Family Education Rights and Privacy Act (FERPA), the student may submit a written request to the Dean of Enrollment Services or designee to inspect and review any grade appeal materials compiled during the process, with the exception of personnel-related materials, not subject to disclosure. The request must be made no less than one week in advance of the scheduled hearing.

9. All members of the Grade Appeal Committee shall honor the confidentiality of the hearing and any comments made by individual members of the Committee pertaining to any appeal case should not be interpreted as official opinions or decisions of the Committee.

### **Issuance of Formal Decisions**

Within ten (10) school days after the close of the hearing, the Grade Appeal Committee shall make its formal written decisions regarding the student's grade appeal and communicate the decision to the student and the instructor. The Vice President of Academic Affairs, the Vice President of Enrollment Development, the department chair, and the Ombuds Office will be copied on this letter.

### **Appeal of Committee Formal Decisions**

#### 1. Timeline and Basis for Appeal to Superintendent/President

Within five (5) school days after issuance of the written Grade Appeal Committee's decision, the student or faculty member may request a review of the decision to the Superintendent/President. The request must be directed to the Superintendent/President and filed with the Dean of Enrollment Services office. The request will state in writing the grounds for review and will be based upon one or more of the following provisions:

- a. The required procedures were not followed;
- b. There is insufficient evidence to support the Grade Appeal Committee's decision.

#### 2. Superintendent/President (or designee) Review

- a. Within thirty (30) school days of receipt of the request for review, the Superintendent/President (or designee) will review the decision of the Grade Appeal Committee. The Superintendent/President has the sole authority to:
  - b. Adopt the decision of the Grade Appeal Committee;
  - c. Modify the decision of the Grade Appeal Committee; or
  - d. Reverse the decision of the Grade Appeal Committee.
- e. The decision of the Superintendent/President (or designee) will be communicated to the student in writing, and a copy sent to the instructor, Dean of Enrollment Services, Grade Appeal Committee Chair, Vice President of Academic Affairs, Vice President of Enrollment Development, and the department chair. The decision of the Superintendent/President is final and binding.

Reference: Education Code 76224

*Reviewed and/or Updated: 10/19/04; 03/24/15*