

**Austin Peay State
University**

Appeals and Appearances Before the Board

POLICIES

Issued: March 17, 2023

Responsible Vice President for Legal Affairs &

Official: Organizational Strategy

Responsible Office of Legal Affairs
Office:

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 matters subsequent to a final adverse decision of the president to the Board. Any available University complaint and/or appeal procedure must be exhausted prior to consideration by the Board.
- B. Termination of tenured faculty may be appealed to the Board but only after completion of any process set out in relevant APSU policy, including Policy 1:025 Academic Tenure and/or Policy 2:043 Termination of Faculty Members for Adequate Cause.
- C. Negative recommendations for tenure may be appealed to the Board but only after completion of any process set out in relevant APSU policy, including Policy 1:025 Academic Tenure.
- D. Decisions resulting from hearings held pursuant to the TN Uniform Administrative Procedures Act (UAPA), as outlined in APSU Policy 1:007, are not appealable to the Board.

- E. 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.
- F. If, at any time during the pendency of the appeal, a lawsuit or administrative action, based on the same subject matter as the appeal, is filed, the appeal will be dismissed without further action.
- G. Matters not appealable to the Board, absent an allegation of violation of federal or state law, 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; Denial of early tenure unaccompanied by notice of termination in the fifth year of the probationary period; Non-renewal of a temporary faculty appointment; Faculty promotions;
 - 3. Salary determinations;
 - 4. Student academic matters, e.g. grade appeals, failure to meet retention policies, etc.;
 - 5. Performance evaluations of faculty and staff; and Residency classification of student for tuition and fee purposes.
- H. 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. Petition to Appeal
 - 1. A student or employee who is dissatisfied with the decision of the President may petition the Board of Trustees for permission to appeal the decision if the matter is appealable as specified in this policy.
 - 2. The petition must be submitted in writing to the Secretary of the Board within 20 calendar days following the

President's written decision.

3. The petition for appeal must present:
 - a. The decision being appealed, the law and/or policy alleged to have been violated, and the redress desired; 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;
 - b. A statement of applicable law/policy A brief argument; and
 - c. Citations of any applicable authorities, (such as policies, statutes, and cases.)
 4. The petition for appeal must be limited to ten (10) pages, typed, 12-point font or larger, doubled spaced, and on 8 ½ X 11" paper.
 5. 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.
 6. The Board committee, in determining whether to grant the petition to appeal, may consider factors including but not limited to the following:
 - a. Whether policy or procedures have been followed;
 - b. Whether or not there is material evidence to substantiate the decision appealed from; and/or
 - c. Whether or not there has been a material error in application of the law which prima facie results in substantial injustice.
- B. Hearing the Appeal
1. If the petition to appeal is granted by the Board committee, the Board committee shall hear the appeal at a later regularly scheduled meeting or special called meeting of the Board committee and may request the person appealing to appear and present arguments on his or her behalf.
 2. 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.

Review of the Appeal

- 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 state or federal law or university policy; provided, however that the decision should not be remanded if the 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 policy; 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 policy.
- 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.

Public Participation**A. 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 the 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 a meeting will be conducted with Trustee participation by electronic means of communication, members of the public may request to appear via electronic means. Members of the public wishing to present via electronic means shall provide their name and agenda topic they wish to address to the Secretary to the Board of Trustees at least 72 hours in advance of the meeting (trustees@apsu.edu). To ensure the availability of appropriate technology, advance notice is required. Members of the public may also be asked to participate in a practice session before the meeting is conducted for the purposes of ensuring the proper functioning of technology.

If possible, members of the public who wish to appear before the Board in person or via electronic means shall provide a brief written statement of the substance of such person's testimony to the 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 Chair of the Board may authorize members of the public to appear 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. Persons will be registered to speak based upon the order in which their registration requests are received, subject to approval of the subject matter by the Chair or Vice Chair, except that no more than three (3) speakers will be scheduled to speak on the same subject. Speakers may not combine their three (3) minute allotment with another speaker and may not give any part of their time to another speaker. Scheduled speakers must be present to address the Board. Scheduled speakers who are unable to attend the meeting may not send a substitute.

Revision Dates

APSU Policy 1:010 – Rev.: March 17, 2023
 APSU Policy 1:010 – Rev.: December 3, 2021
 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: (sign upon approval)