

WAC 504-26-420 Appeals. (1) Time for appeals. Decisions made by a conduct officer or conduct board become final on the twenty-first calendar day after the date the decision is sent to the parties, unless an appeal is submitted within twenty calendar days of the date the decision is sent to the parties.

(2) Effect of appeal - Stay. Except in extraordinary circumstances, which must be explained in writing in the conduct officer's or conduct board's initial order, the implementation of an initial order assigning sanctions must be stayed pending the time for filing an appeal and the issuance of the university's final order.

(3) Appeals of conduct officer decisions. Upon receipt of a timely appeal, the appeals board provides the other parties, if applicable, with a copy of the appeal and an opportunity to respond, and conducts a limited review as described below.

(a) Scope of review. Except as required to explain the basis of new information, appeal of a conduct officer decision is limited to a review of the record for one or more of the following purposes:

(i) To determine whether the conduct officer hearing was conducted fairly in light of the charges and information presented, and in conformity with prescribed procedures; deviations from designated procedures are not a basis for sustaining an appeal unless significant prejudice results;

(ii) To determine whether the decision reached was based on substantial information, that is, whether there were facts in the case that, if believed by the fact finder, were sufficient to establish that a violation of the standards of conduct occurred;

(iii) To determine whether the sanction(s) assigned were appropriate for the violation of the standards of conduct that the respondent was found to have committed; or

(iv) To consider new information, sufficient to alter a decision, or other relevant facts not brought out in the original conduct officer hearing, because such information and/or facts were not known to the person appealing at the time of the original conduct officer hearing.

(b) Conversion to conduct board hearing. The appeals board makes any inquiries necessary to ascertain whether the proceeding must be converted to a conduct board hearing in accordance with WAC 504-26-403.

(4) Appeals of conduct board decisions. Upon receipt of a timely appeal, the appeals board provides the other parties, if applicable, with a copy of the appeal and an opportunity to respond.

(a) The appeals board must have and exercise all the decision-making power that the conduct board had, except that the appeals board must give due regard to the conduct board's opportunity to observe the witnesses, if applicable. The appeals board members must personally consider the whole record or such portions of it as may be cited by the parties.

(b) Scope of review. The appeals board conducts a full review in accordance with RCW 34.05.464.

(5) University's right to initiate appeal. The university president or designee, at their own initiative, may request that the appeals board review any initial order. Prior to taking action, the appeals board must notify the parties and allow them an opportunity to explain the matter.

(6) Appeals board decisions.

(a) Actions. After reviewing the record and any information provided by the parties, the appeals board may take the following actions:

(i) Affirm, reverse, or modify the conduct board's or conduct officer's decision, or any part of the decision;

(ii) Affirm, reverse, or modify the sanctions assigned by the conduct board or conduct officer, or any part of the sanctions; or

(iii) Set aside the findings or sanctions, or any part of the findings or sanctions, and remand the matter back to the conduct board or conduct officer with instructions for further proceedings.

(b) Content of decision. The decision includes the outcome, any sanction, and a brief statement of the reasons for the decision. The letter must advise the parties that judicial review may be available. For appeals of conduct board hearings, the decision includes, or incorporates by reference to the conduct board's decision, all matters as set forth in WAC 504-26-403.

(c) Service and effective date of decision. For appeals of conduct officer decisions, the appeals board's decision must be sent simultaneously to the parties within twenty calendar days of receipt of the appeal. For appeals of conduct board decisions, the appeals board's decision must be sent simultaneously to the parties within thirty calendar days of receipt of the appeal, unless the appeals board notifies the parties in writing that additional time (up to ninety calendar days) is needed. The appeals board's decision is the final order of the university, except in the case of remand, and is effective when sent.

(7) Reconsideration of final orders. Within ten calendar days of service of a final order, any party may submit a request for reconsideration. The request must be in writing, directed to the appeals board, and must state the reasons for the request. The request for reconsideration does not stay the effective date of the final order. However, the time for filing a petition for judicial review does not commence until the date the appeals board responds to the request for reconsideration or twenty-one calendar days after the request has been submitted, whichever is sooner. If the appeals board does not respond to the request for reconsideration within twenty-one calendar days, the request is deemed to have been denied.

(8) Stay. A party may request that the university delay the date that the final order becomes effective by requesting a stay in writing to the appeals board within ten calendar days of the date the order was served.

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-420, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-420, filed 11/19/18, effective 12/20/18.]