

THE CITADEL
The Military College of South Carolina
171 Moultrie Street
Charleston, S.C. 29409

MEMORANDUM
NUMBER 2-018

17 September 2013

**POLICY FOR CADET OR NON-CADET STUDENT
APPEALS OF DISCIPLINARY DECISIONS**

1. PURPOSE

The President is the appellate authority for all Class I disciplinary offenses in which the punishment imposed is less than expulsion. The purpose of this Memorandum is to describe the policy regarding appeals of cadets and non-cadet students of the decisions in those cases. The procedure for appeals of disciplinary cases in which the punishment imposed is expulsion is described in the *College Regulations*. The procedure for appeals of honor cases is described in the *Honor Manual*.

2. REFERENCES

United States Constitution, Amendments IV and XIV

3. DEFINITIONS

Review Committee: A committee of senior staff members who review all documents related to a cadet or non-cadet student appeal and make recommendations to the President.

Disciplinary Board of Review (DBOR): A board comprised of senior staff or faculty, a TAC officer, staff or faculty member, a non-voting recorder, and a non-voting cadet. The DBOR is charged with making a recommendation to the President on a cadet or non-cadet student appeal if the Review Committee believes the appeal has merit.

4. POLICY

A. The President will only consider a grant of relief from a disciplinary decision on the following grounds:

1. That the hearing officer or board failed to provide due process, or
2. That significant information has been discovered since the board or hearing, which would probably change the result, but which could not, in the exercise of due diligence, have been presented to the board or hearing.

- B. A cadet or non-cadet student may appeal an applicable disciplinary decision by preparing an appeal to the President based only on either or both grounds outlined in Paragraph 4A above. The preparation and submission of the appeal, which must include grounds on which relief is being sought, is exclusively the responsibility of the cadet or non-cadet student.
 - 1. An appeal must include all materials necessary for the President to fully evaluate the appeal.
 - 2. In cases in which an appeal alleges that significant evidence has been discovered since the hearing that was not available at the time the decision was reached, the appeal must include that evidence, or, if unavailable, a written description of such evidence in sufficient form as to fully apprise the President of the nature of the evidence and the material impact it would have had on the proceedings below.
- C. The procedures for cadet or non-cadet student appeals are included in Annex A.
- D. At any point in the review process outlined in Annex A, the President, on his own initiative or at the recommendation of the Review Committee or the DBOR, may take any of the actions identified in those procedures.
- E. The President is not bound by the recommendation of either the Review Committee or the DBOR.
- F. The decision of the President shall be final.

5. COMPLIANCE

- A. A cadet's or non-cadet student's failure to timely submit an appeal will result in imposition of punishment, which will constitute the final action of the College in the disciplinary matter at issue. The College will not consider or take action on any further requests by the cadet or non-cadet student.
- B. Any other failure to follow the procedures contained in Annex A shall not constitute grounds for reversal or other modification of the punishment, or dismissal of the appeal.

6. NOTES

A. Dates of official enactment and amendments:

- 1. Approved by the Director of The Citadel Staff 11 February 2010.
- 2. Vitiating by action of the Board of Visitors 11 June 2011
- 3. Reinstated, in part, by action of the Board of Visitors 4 August 2011

4. Revision approved by the President 12 September 2011
5. Revision approved by the President 18 July 2012
6. Revision approved by the President 23 July 2012

B. Responsible Department:

Executive Assistant to the President

C. Responsible Official:

Executive Assistant to the President

D. Cross References:

[College Regulations](#)

[Blue Book](#)

7. RESCISSION

Memorandum 2-18, approved 23 July 2012, is rescinded

8. REVIEW

Review this policy on an annual basis.

FOR THE PRESIDENT:

OFFICIAL

//signed, TWS, 17 September 2013//
TAYLOR W. SKARDON
Captain, USN (Retired)
Executive Assistant to the President

Attachments

Annex A - Procedures for Cadet or Non-Cadet Student Appeals

Appendix 1 to Annex A - Disciplinary Board of Review Standard Operating Procedure

Annex A

Procedures for Cadet or Non-Cadet Student Appeals of Disciplinary Decisions

1. The cadet or non-cadet student must present the appeal to the Office of the President within five (5) business days of the announcement of the punishment. Requests for extensions beyond the five (5) business days are in the discretion of the Office of the President, or designee, and may only be granted in extraordinary cases. Requests to accommodate the schedule or other needs of anyone involved in the preparation of the appeal are not considered “extraordinary cases.” Requests for extensions must be submitted in writing to the Office of the President by the cadet or non-cadet student and must include the justification for the extension.
2. The Office of the President will send the appeal to the Office of the Commandant, for cadets, or to the Office of the Provost, for non-cadet students, which shall review the appeal and prepare a response (“the College’s Response”). The Office of the President will provide a copy of the College’s Response to the cadet or non-cadet student.
3. Upon receipt of the College’s Response, or upon notification that the Commandant has waived the College’s Response, the President may refer the appeal, the College’s Response, and the cadet’s college record (collectively, “the Materials”) to a standard Review Committee composed of the Provost, the Vice President for Finance, and the Vice President for Operations (for cases involving non-cadet students, the Review Committee shall consist of the Commandant, the Vice President for Finance, and the Vice President for Operations). The President may appoint alternate members of the Review Committee for reasons including but not limited to a conflict of interest. The Review Committee should attempt to have an Initial Review within five business days of its receipt of the case.
4. The Review Committee will review the Materials and make a recommendation to the President. The Review Committee may recommend to the President:
 - A. Grant the appeal,
 - B. Remand the matter to the Commandant (or Provost, as appropriate) for reconsideration,
 - C. Modify the finding or punishment imposed,
 - D. Reject the appeal, or
 - E. Forward to a Disciplinary Board of Review (DBOR) for further review.

5. The President shall review the materials and the Review Committee's recommendation. The President may:
 - A. Grant the appeal,
 - B. Remand the matter to the Commandant (or Provost, as appropriate) for reconsideration,
 - C. Modify the finding or punishment imposed,
 - D. Reject the appeal, or
 - E. Forward the appeal to a Disciplinary Board of Review (DBOR) for further review.

6. If the President forwards the appeal to a DBOR:
 - A. The DBOR shall review the materials, pursuant to the DBOR Standard Operating Procedures, Appendix 1 to Annex A, and make a recommendation to the President. The DBOR may recommend that the appeal be:
 1. Granted,
 2. Remanded to the Commandant (Provost) for reconsideration,
 3. Modified, or
 4. Rejected.
 - B. The President shall review the materials and the recommendation of the DBOR. The President may take any of the actions identified in Paragraph 6A, above.

Appendix 1 to Annex A

Disciplinary Board of Review – Standard Operating Procedures (SOP)

1. **Composition.** A Disciplinary Board of Review (DBOR) shall be composed of:
 - A. A Vice-President, Dean, or Associate Provost, who shall serve as Chair.
 - i. The Chair shall be responsible for convening the DBOR in an expeditious manner, ruling on all substantive and procedural issues raised during the Request process, and delivering the DBOR report to the President.
 - B. A Battalion or Company Tactical Officer who did not participate in the disciplinary hearing at issue in the Request.
 - C. A representative of the faculty or staff.
 - i. If the Chair is a Vice President, the representative shall be a faculty department head.
 - ii. If the Chair is a Dean or Associate Provost, the representative shall be a department director from the staff of the college.
 - D. A non-voting recorder
 - i. If the Chair is a Vice President, the recorder shall be a department director from the staff of the college.
 - ii. If the Chair is a Dean or Associate Provost, the representative shall be a faculty department head.
 - iii. The Recorder shall assist the Chair, as directed. Such assistance may include scheduling the Initial Review, scheduling the Hearing, notifying all the parties of various Board actions, preparing correspondence to include the final report, and recording the Hearing.
 - E. A non-voting cadet or student who did not participate in the disciplinary hearing at issue in the Request.
 - i. If the appellant is a cadet, the student representative shall be a cadet with the cadet rank of Lieutenant Colonel.
 - ii. If the appellant is a non-cadet student, the student representative shall be a non-cadet student.

- iii. The role of the cadet / student advisor is to provide cadet / student perspective to the DBOR.

2. Procedure.

- A. **Appointment.** Upon receipt of an appeal Request for Reconsideration which qualifies for review by a DBOR as prescribed above, the Executive Assistant to the President shall appoint on Special Orders a Disciplinary Board of Review. He shall insure that the Board receives sufficient copies of the report of the Board or Hearing, the Request for Reconsideration, and the College's Response.
- B. **Initial Review.** The Chair shall convene the DBOR after its appointment to determine if the Request warrants a hearing before the DBOR. Board members should focus on the issues raised by the appellant and whether or not these fit the grounds for a Request as outlined in Paragraph III of this SOP (Basis for Request). After review and discussion of the materials, the DBOR will vote whether to report to the President of the College that there are insufficient grounds for a Request or to proceed to holding a formal hearing. The voting members of the DBOR shall each have an equal vote in determining the merits of the Request.
 - i. If the Board determines a Hearing is warranted, it shall identify, in writing, the issues to be considered. The Recorder shall deliver this identification of issues to the appellant and the Commandant (or Provost, as appropriate).
 - ii. If the Board determines a hearing is not warranted, the Chair shall forward this decision in a report prepared pursuant to II.D, below, to the President of the College.
- C. **Hearing.** If the DBOR determines that a formal hearing is warranted, it shall conduct the hearing in the following manner:
 - i. The Chair, through the Recorder, shall notify all parties of a convenient time and location.
 - a. The appellant shall attend the Hearing. The appellant may be assisted by up to two advisors, as provided in the *College Regulations*. However, it is the responsibility of the appellant to present the Request to the DBOR.
 - b. The Commandant or his representative, or the Provost or his representative, as appropriate, (hereafter "the college's representative"), shall attend to present the college's response to the Request, and to answer any questions

concerning the case as it relates to the issues raised in the Request.

- c. Should one of the issues to be considered be the introduction of new evidence, the DBOR shall rely solely on the written materials submitted with the Request for Reconsideration. The College's Representative may present written descriptions of evidence in response no later than two business days prior to the hearing.
 - d. Except in extraordinary circumstances, as determined by majority vote of the DBOR during the Initial Review, the Hearing shall not include the questioning of live witnesses. Rather, the Hearing shall only consist of argument by the appellant and the College's Representative, and questions by the DBOR, as provided herein.
- ii. After opening the hearing, the Chair shall allow the appellant to present and make argument on the issues in dispute. Members of the DBOR may ask questions of the appellant.
 - iii. The college's representative shall make argument in response to the appellant's argument. Members of the DBOR may ask questions of the college's respondent.
 - iv. Either party may submit questions to the DBOR to be asked of the other party; the Chair of the DBOR shall decide whether to ask the proposed question(s).
 - v. After each party has been heard in full, in the discretion of the Chair, the DBOR shall enter into closed session to conduct deliberations. This session will not be recorded. The findings and recommendation of the DBOR shall be sent to the President in writing.
- D. **Report.** Upon conclusion of the Initial Review, or upon conclusion of the Hearing, the DBOR shall prepare a report to the President. The report must address the issues raised by the appellant, the findings and supporting rationale of the DBOR on each of the issues, and a recommendation for action on the Request by the President. The DBOR may attach a minority report on any or all issues if the DBOR's findings or recommendations are not unanimous.
- E. **Action by the President.** The President shall receive the Report of the DBOR and take action as he may deem fit. The President is not bound by the findings, rationale, or recommendations of the DBOR; he may make his own determinations on each.

3. GENERAL GUIDANCE FOR THE CONDUCT OF THE BOARD OF REVIEW.

- A. The DBOR does not provide a second forum to retry each case; rather, it sits as an administrative board to address the issues raised by the student in the written Request, provided those issues are within the guidelines of Paragraph III of this SOP. As a general rule, external courts are reluctant to interfere with the self-governance of colleges. Before taking serious disciplinary action against a student, a college must provide the student with notice of the charges against him or her and an opportunity to contest those charges. Furthermore, the college's decision must be based on ample evidence. The charge of the DBOR is to determine if the College has met those obligations.
- B. The primary questions for the Board to answer are as follows:
 - i. Did the college (in this case, the hearing officer or board) afford the appellant a fair hearing? This question deals only with how a decision has been reached, and not with the decision itself.
 - ii. Was there evidence of substance that supports the Commandant's Board's or Hearing Officer's decision?
 - iii. Is there new evidence available now that was not available at the time the board or hearing took place? If so, is that evidence of such substance that it would likely produce a result more favorable to the student if heard by the Commandant's Board or Hearing Officer?
- C. Attorneys and other attendees:
 - i. Students who are facing disciplinary hearings for an act which is also the subject of an off-campus criminal proceeding may request that one of his or her advisors be an attorney. A request to have an attorney present must be made in writing to the Chair two days in advance of the hearing. An attorney may only act in an advisory role to the student. An attorney may not make argument at the hearing, ask questions of witnesses or board members, or in any other way actively participate in the hearing process. If the student has an attorney present as an advisor, the College may, at the discretion of the board Chair, have legal counsel present to advise the board.
 - ii. Upon request and consent of the appellant, the DBOR, in its discretion, may permit other persons to be present during the hearing.
- D. Timeliness: The DBOR should keep in mind the importance its findings will have upon the student. Students accused and found responsible for an offense resulting in suspension, dismissal, or expulsion generally suffer a

decline in academic performance, therefore a timely resolution of the Request benefits all parties. The student has five business days in which to prepare his Request after the decision by the President. The DBOR should attempt to have an Initial Review within five business days of its receipt of the case. If the DBOR elects not to hold a Hearing, it should submit its report to the President within two business days of reaching that decision. If the Board elects to hear the review, it should hold the hearing within five business days after it makes its decision to hear it. The final report of the Board should be sent to the President of the College within two business days after the hearing.