

SENATE APPEALS POLICY

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Category: Academic

1.0 POLICY STATEMENT

A Learner may, in accordance with this Senate Appeals Policy, appeal all promotion or withdrawal decisions and all findings of unprofessional behavior made by a NOSM University program or committee under the purview of the Senate to the Senate Appeal Committee (“**SAC**”).

Upon receipt of an appeal over which the SAC has jurisdiction (as set out in this Senate Appeals Policy and the Senate Appeals Committee Terms of Reference), the Chair of the SAC shall convene a panel (“**Senate Appeals Panel**” or “**Panel**”) to hear the appeal.

2.0 DEFINITIONS

For the purposes of this document, the following definitions will apply

“**Appellant**” means a learner who appeals a decision.

“**day**” or “**days**” means calendar days, and if a time limit referred to in this Policy ends on a day that is not a Working Day, then the end date of the time limit shall be the next Working Day.

“**Learner**” means any student enrolled in a NOSM University program governed by the Senate, including but not limited to MD students, postgraduate residents (trainees), dietetic interns, and graduate students.

“**Natural Justice**” refers to common law principles developed by the courts to help define the rules for decision-making. The two central components of natural justice are:

1) Procedural Fairness

The party(ies) affected by a decision may be entitled to receive:

- notice of the matter under consideration together with specifics of the matter being considered;
- an opportunity to make representations through a written and/or oral hearing; and
- reasons for the decision that is made.

2) The Absence of Bias

Decision-makers must be both actually unbiased and not appear to be biased to the reasonable person. A reasonable apprehension of bias arises where an informed person, viewing a matter realistically and practically - and having thought the matter through – does not believe that a decision-maker is capable of deciding the matter fairly.

“**NOSM University**” or the “**University**” refers to the Northern Ontario School of Medicine University

“**Program**” means any combination of courses and/or other study requirements that, upon successful completion, lead to the award of a formal qualification such as a university degree (MD or MMS) or health professional certification (CCFP, FRCPSC or RD).

“**Respondent**” is the person or persons who is responsible for responding to an appeal and will often be the person or persons who made the decision being appealed.

“**Working Day**” means a day in which the NOSM University offices are open for business from Monday to Friday and excludes statutory holidays and any other day that the University remains closed.

3.0 APPEAL PROCESS

3.1 Grounds for an appeal to the Senate

An appeal will be considered only where an Appellant is able to establish that the decision under appeal:

- a. was made without jurisdiction.
- b. is not reasonably supported by the evidence that was or should have been before the decision maker; or
- c. was made in a manner that did not adhere to the principles of Natural Justice.

3.2 Commencement of an appeal to the SAC

Prospective Appellants should consult the relevant Learner service office of their Program for regulations and policies governing appeal procedures.

An appeal to the SAC is commenced by completing all required sections of a *Request for Appeal to the Senate Appeals Committee Form* (“**Request for Appeal**”) and submitting this Request for Appeal to the Chair of the SAC c/o the University Secretary Senate within 10 Working Days of receipt of the notice at the previous level.

For greater certainty a completed Request for Appeal must include a succinct description of:

- a. the specific decision which is being appealed.
- b. the outcome being requested.
- c. the specific grounds on which the appeal is based, with specific reference to the grounds for appeal set out in section 3.1 above:
- d. a summary of the evidence (including a copy of relevant documents) in support of these grounds.
- e. if the grounds for appeal include that the previous decision maker did not consider evidence that was, or in the circumstances should reasonably have been, before the

decision maker, a summary of such evidence including the copies of the documents that constitute or corroborate such evidence, and in the case of new evidence an explanation of why such evidence was not available at the time of the original decision; and

- f. an indication as to whether the appellant and/or representative wishes to attend a hearing.

The Chair of the SAC and/or the University Secretary Senate will contact the Appellant within five (5) Working Days of receiving the Request for Appeal to confirm receipt of the appeal and raise any issues with respect to the completeness of Request for Appeal and/or timing of the appeal.

An appeal to the SAC may only be made:

- a. after a decision subject to the appellate jurisdiction of the SAC has been made and communicated to the Learner.
- b. after all procedures at the previous level(s) have been exhausted

3.3 Power not to advance appeal

The Chair of SAC may decide not to advance the appeal if the Request for Appeal:

- a. is substantially incomplete or otherwise procedurally defective: or
- b. is received after the time limits set out in this Policy.

Before making a final decision not to advance the appeal, the Chair of SAC shall give the Appellant notice of their intention not to advance the appeal, including details of the reasons for proposing to do so. The Appellant may within 5 Working days of receipt of such notice, or such other time as the Chair agrees, (i) provide written submissions to the Chair of SAC in response to the reasons set out by the Chair of SAC for not advancing the appeal; or (ii) in the case of a deficiency under subsection (a), rectify the incompleteness or deficiency identified. If the Appellant has not met the time limits set out in this Policy, their submissions should address the factors set out in section 3.5 of this Policy.

If the Appellant does not file submissions or remedy the deficiency as provided or if, after reviewing any submissions made, the Chair of SAC considers it appropriate not to advance the appeal, they may do so and notify the Appellant of this decision. Decisions of the Chair of SAC not to advance an appeal are final and are not subject to further appeal.

3.4 Responding to an appeal

Unless the Chair of SAC has decided not to proceed with an appeal pursuant to section 3.2, then upon receipt of a completed Request for Appeal the Chair of the SAC shall:

- a. convene a Senate Appeals Panel from among the members of the SAC as provided in the Senate Appeals Committee Terms of Reference to consider the appeal.
- b. provide the Respondent with a Copy of the Request for Appeal.

- c. request the Respondent to provide the Panel and the Appellant with a copy of the record of the decision (“**Record**”), which Record shall include:
 - I. The decision and the reasons for the decision being appealed.
 - II. If the decision being appealed was itself an appeal, the decision, and reasons for decision of the original decision maker, together with any record provided by such original decision maker.
 - III. All evidence and documents referred to in the decision and reasons for decision.; and
- d. invite the Respondent to make succinct submissions responding to the Request for Appeal, which responding submissions shall be provided to the Senate Appeals Panel and the Appellant within 10 Working Days of receipt of the invitation.

The Appellant may file a succinct reply to the Respondent’s submissions within 10 Working Days of receipt of the Respondent’s submissions. The Appellant is not required to deliver a reply and can accelerate the process by indicating before the 10 Working Days have elapsed that they do not intend to reply.

3.5 Time limits

Time is of the essence in all SAC appeals and failure to adhere to a time limit set out in this Policy, or otherwise imposed by the Senate Appeals Panel, will mean that the party loses the right to file the document or take the action to which the time period relates, unless:

- a. A dispensation is obtained from the Chair of the Panel or the Chair of the SAC in advance of the expiration of the time limit: or
- b. The Chair of the Panel provides a dispensation after the expiration upon being satisfied that there is a reasonable cause for the delay. Reasonable causes for the delay include but are not limited to illness, accident, a serious personal matters or other circumstances which are beyond the control of the Appellant or Respondent.

Any notice or other documents sent via email in connection with a SAC appeal shall be deemed delivered on the day next following the date of the sending of the email.

3.6 Dismissal of appeal without an oral hearing

The Senate Appeals Panel may, on its own motion, dismiss a case after a review of the materials filed by the Appellant and Respondent, and before an oral hearing if the Panel is satisfied that:

- a. it does not have jurisdiction; or

- b. the appeal is clearly without merit, is frivolous and vexatious, or was commenced in bad faith.

Before dismissing an appeal without a hearing, the Chair of the Panel shall notify the Appellant (with a copy to the Respondent) of its intention to do so. This notice shall set out the reasons why the Senate Appeals Panel is considering dismissing the appeal without a hearing and invite the Appellant to provide succinct written submissions about why the appeal should not be dismissed within 5 Working Days after receiving the Notice (with a copy to the Respondent).

The Panel shall notify the parties in writing of its decision on the motion to dismiss the appeal without a hearing.

Decisions of the Senate Appeals Panel to dismiss an appeal without a hearing are final and are not subject to further appeal.

3.7 Oral hearing procedures

Right to attend the hearing

Both the Appellant and the Respondent have the right to appear before the Senate Appeals Panel to make oral submissions and, in cases where the Panel determines that it is necessary to hear evidence that was not considered by the previous decision maker, to present evidence and cross-examine as the case may be. In addition, the Panel, on its own initiative, may request that any party appear at the hearing.

Hearings to be closed

Senate Appeals deal with issues related to individual learners and are ordinarily conducted in a closed session and accommodated by video and/or telecommunications. The appeal hearing may be recorded, and notes may be taken by the Senate Appeals Panel, the Appellant and/or the Respondent. Documentation provided in the course of an appeal is treated as confidential subject to the Freedom of Information and Protection of Privacy Act.

Notice of Oral Hearing

Except where an appeal is dismissed without an oral hearing (section 3.5), an oral hearing shall be commenced as soon as possible following the completion of the written filings described in sections 3.2 and 3.3. An attempt shall be made to schedule the hearing at a time and place convenient for the parties and for the panel. However, the time of the commencement of the hearing is within the sole discretion of the Chair of the Panel.

The parties shall be given written notice of the hearing. In the case of Appellants, the notice shall be sent via electronic mail to an address provided by them for that purpose.

The written notice of hearing shall set out the time and place of the hearing, whether the Senate Appeals Panel will permit additional evidence to be presented at the oral hearing, and a preliminary order of proceeding at the hearing.

Representation at the Hearing

Both the Appellant and the Respondent are entitled to the assistance of an advisor or any other person, including a legal representative, throughout the process. The cost of representation is born by the party and no costs will be awarded by the Panel against one party for representation of another party.

The Appellant and Respondent are each responsible for presenting their own case to the Senate Appeals Panel, except to the extent otherwise determined by the Chair in accordance with the principles of Natural Justice.

Order of Proceeding at the Hearing

The following indicates the order of an appeal where the parties are present. The Committee may alter the order of the hearing in the interests of fairness.

(1) The Chair shall commence the proceeding by addressing the following, as necessary:

- a. Identify the members of the Panel and the parties
- b. Identify the nature of the appeal
- c. note for the record the documentary information submitted by the parties, and
- d. address any preliminary issues raised by the parties or questions to clarify issues from the Committee.

(2) The Appellant shall have the first opportunity to make their submissions.

If the Panel has indicated in the notice of oral hearing that it will permit evidence to be called at the hearing of the appeal, then the Appellant will begin by presenting the evidence the Appellant wishes to present to the Panel. If the evidence is presented through a witness, then immediately after the Appellant has examined the witness, the Respondent and then the Panel shall have an opportunity to ask the witness questions.

After the new evidence has been presented, or if no new evidence has been permitted by the Panel, the Appellant shall be given an opportunity to make succinct submissions to the Panel. It is intended that this be an opportunity for the

Appellant to elaborate on the submissions set out in the Request for Appeal and to answer any questions that the Panel may have.

- (3) The Respondent shall then have the opportunity to provide succinct submissions responding to the new evidence, if any, and the submissions of the Appellant.

In rare circumstances the Senate Appeals Panel may grant the Respondent the opportunity to present further evidence to respond to any new evidence that was presented by the Appellant at the hearing. Any such further evidence shall be presented before the Respondent makes their submissions. If such evidence is presented through a witness, then immediately after the Respondent has examined the witness the Appellant and then the Panel shall have the opportunity to ask the witness questions.

- (4) The Appellant shall then have an opportunity to reply to any new issues raised in the Respondent's presentation.

The Chair of the Panel shall have the right to alter this order and process where appropriate and in accordance with the principles of Natural Justice.

The Chair may grant a recess or adjournment at any time during the hearing to ensure a fair hearing.

Persons appearing before the Committee may be required to give evidence under affirmation or oath.

The Chair shall have the discretion to limit the testimony and questioning of witnesses to those matters the Chair considers relevant to the disposition of the case.

The parties are responsible for producing their own witnesses and for paying the costs associated with their appearance before the Committee.

The Committee shall have the power to request written or documentary evidence by the parties or by any other source.

The Chair has the power to rule on the admissibility of evidence.

3.8 Panel deliberation and decision

At the conclusion of the hearing, the Senate Appeals Panel will deliberate in camera for the purpose of arriving at a decision.

Within five working days of the conclusion of the hearing, the Chair of the Panel shall provide a decision including written reasons for decision to the Appellant, the Respondent, the appropriate Associate or Vice Dean, and to other individuals as the Chair deems appropriate and/or necessary.

The Decision of the Senate Appeals Panel shall include the following, except where otherwise determined by the Chair in accordance with the principles of Natural Justice:

- a. the membership of the AC
- b. a summary of the background to the appeal
- c. a summary of the submissions
- d. the findings of fact (if any)
- e. the decision, recommendations (if any) and reasons for its decision.

The Decision of the Senate Appeals Panel shall be final and is not subject to further appeal.

In arriving at the Decision, the Senate Appeals Panel has the power and authority, in its discretion, to:

- a. Dismiss and thereby deny the appeal in whole or in part.
- b. Refer the matter back to the program with instructions for reconsideration; or
- c. Grant immediate relief.

In cases involving allegations of breach of academic dishonesty, professionalism or the penalty for such allegations, the Senate Appeals Panel may direct a hearing de novo either at the program level or before the Senate Appeals Committee according to the procedures for hearing allegations of breach of professionalism or academic dishonesty.

4.0 INTERPRETATION

Questions of interpretation or application of this policy or its procedures will be referred to the University Secretary, Governance Office – NOSM University governance@nosm.ca.

5.0 RELATED DOCUMENTS

University Documents and Information

- Senate Appeal Committee Terms of Reference
- Request for Appeal Form

AUTHORITIES AND OFFICERS

The following is a list of authorities and officers for this policy:

- a. Approving Authority: Senate
- b. Responsible Officer: Senate Appeal Chair
- c. Procedural Authority: Senate Appeal Chair
- d. Procedural Officer: University Secretary

Review and Revision History

Review Period: 3 years or as required

Date for Next Review: 2024 01