

Appealing an Administrative Officer or Judiciary Decision

Decisions of an Administrative Officer or Judiciary may be appealed according to guidelines set forth in Article 4 of the document *Academic Freedom for Students at Michigan State University* (found in Spartan Life or on-line at <http://www.vps.msu.edu/SPLife/index.htm>). The procedures and guidelines for filing an appeal are as follows:

1. The appeal must be submitted in writing to the University Student Appeals Board, c/o Judicial Affairs Office, 101 Student Services Building by 5:00 pm of the date listed in your Notification of Decision letter or by returning this completed form (page two) via e-mail to **judaffrs@vps.msu.edu**.
 - a. The respondent may appeal the decision for four reasons:
 - i. There were insufficient grounds for the decision;
 - ii. The sanction is inappropriate to the seriousness of the offense;
 - iii. The applicable procedures for the hearing were not allowed, or;
 - iv. There was a conflict of interest with a member or members of the judiciary.
 - b. The complainant may appeal for three reasons:
 - i. If the decision made by the hearing body was to not grant a hearing;
 - ii. The applicable procedures for the hearing were not followed, or;
 - iii. There was a conflict of interest with a member or member of the judiciary.
2. The Appeals Board will review any written materials provided by the person bringing the appeal and all materials relevant to the case. This may include, but not be limited to:
 - a. The record of the hearing;
 - b. Original reports filed in regard to this matter;
 - c. Other completed judicial cases, and;
 - d. The procedures used in the hearing, if applicable.
3. The Appeals Board may send a copy of the appeal letter to the complainant and decision-maker and ask them for any additional information that should be considered.
4. The appeals Board will then decide as follows:
 - a. There are not sufficient reasons for another hearing and the decision of the lower judiciary or the Administrative officer may stand, or;
 - b. The judiciary or Administrative officer shall be directed to rehear the case or to reconsider or clarify its decision, or;
 - c. Affirm, reverse or modify the decision, or in extraordinary circumstances, elect to rehear the case in its entirety.
5. All decisions of the University Student appeals board with respect to individual and group actions are final unless appealed to the Vice President for Student Affairs and Services.

LETTER TO THE UNIVERSITY STUDENT APPEALS BOARD

Date: 12/12/08 Name: Kara Spencer

Campus Address/Phone Number: 517-918-8119/517-355-8266 x118
A11064710

PID:

I am appealing a decision made by (Name of Administrative Officer or Judiciary) Student-Faculty Judiciary,
on (date of decision) 12/10/08 (12/2/08-date of hearing)

I am the Respondent Complainant (check one).

I am appealing this decision on the following grounds:

RESPONDENT: (There are 4 potential grounds for an appeal. **Check only those that apply.**)

- There was insufficient information for me to have been found responsible for violating University policy.
- The sanction selected is inappropriate for the seriousness of the offense.
- The applicable procedures for the hearing or administrative officer meeting were not followed.
- There was a conflict of interest with a member or members of the judiciary.

COMPLAINANT: (There are 3 potential grounds for an appeal. **Check only those that apply.**)

- The hearing body with original jurisdiction decided not to grant a hearing.
- The applicable procedures for the hearing were not followed.
- There was a conflict of interest with a member or members of the judiciary.

APPEAL LETTER: (Appeals should be typed and presented in a professional manner.)

- I have attached a letter, which specifically addresses reasons for each of the appeal grounds I checked above.

If you are submitting via e-mail you must type your reasons below:

To whom it may concern,

Please accept this letter as my official response to the decision of the Student-Faculty Judiciary received by me on December 10, 2008. I am appealing that decision on the following grounds:

A) There was insufficient information for me to have been found responsible for violating University policy. The judiciary did not take into account its First Amendment responsibilities and indeed some members of the judiciary explicitly stated that it was not a First Amendment issue. Members further stated that legal issues were beyond the scope of the board and not something they were concerned with. The current university policies are not content neutral, as the decision acknowledges when stating that personal emails are never acceptable while other types of email are acceptable. Further, the university policy maintains that emails must first be submitted for approval. By definition a policy cannot be content neutral if one is required to submit the content for review/approval. In addition, the policy is not "narrowly tailored" to serve MSU's interests as required by law, but rather vague and ambiguous. Simply restricting the number of emails is not enough to meet the standard. In fact, during the hearing Mr. Hall stated that the policy was purposely broad

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to allow for it to be interpreted and applied on a "case by case" basis, clearly a violation. The judiciary did not know enough about its duties and the law to judge appropriately.

B) The sanction selected is inappropriate for the seriousness of the offense. The boards have the power, the duty even, to recognize that they will not enforce an unconstitutional rule or policy. With regard to an unconstitutional policy, there can be no offense, hence any sanction is inappropriate.

C)

1. The applicable procedures for the hearing were not followed. Prior to the hearing, a request was made for a postponement to allow, among other things, for a specific witness to be present. The witness was a former full-time employee of MSU ATS, and would have addressed specific claims made by Mr. Hall regarding the technical aspects of this case, which I believe played a role in the board's ruling. The request for a postponement was denied.

2. Given the multitude of legal issues surrounding this case a request was made for counsel to be present to merely observe the process, not to act/participate in any way. This request was denied.

3. Request was made in advance of the hearing for a copy of the judiciary's codes of operation. This request was not honored until after the hearing had taken place.

4. Claims were made by Mr. Hall on behalf of Dr. Gross and statements/actions attributed to her which Mr. Hall cited as reasons for initiating/pursuing an investigation/complaint. Dr. Gross, although listed as a potential witness, was not present to substantiate Mr. Hall's statements, nor was she available to answer questions from the board or myself.

I would further point out the following:

1. Regarding GSR 4.05, the decision states that "the MSU Network is considered a University facility. Therefore, your unauthorized use of this facility constitutes a violation and you have been found responsible as well." At no time did I access the MSU Network with my netID. All emails were sent from my private gmail account, from my private computer. Mr. Hall further acknowledged in the hearing that the internet was a public resource. It is inconsistent with the intent of GSR 4.05 to claim that emails sent from non-university email accounts, using a non-university (in this case Comcast) ISP constitute a violation of this policy.

2. The stated intent of MSU's bulk email policy is to reduce the amount of "undersired" emails. The original inquiry from Dr. Gross regarded the use of a private university listserv and Mr. Hall acknowledged in the hearing that, after learning that a listserv had not been accessed/used in sending the emails, he then took it upon himself to investigate further despite the fact that no valid complaint existed. There is no indication that the email was unwelcome or undesired. Therefore, no legitimate grounds existed for the complaint filed by Mr. Hall.

3. Mr. Hall stated in the disciplinary allegations form that "The student was informed of the proper procedures to follow and flatly refused to obtain the proper permissions stating that she would continue to send emails out and demanded that I file charges against her....stated her intention to continue breaking the Network Acceptable Use Policy by continuing to send out bulk unsolicited emails (ie: SPAM). This allegation was challenged extensively in the hearing, at no time did Mr. Hall reiterate or restate his above position, Mr. Hall allowed my accounting of our conversation to stand. In fact, no emails were sent in the hours preceding the conversation with Hall, and no emails were sent following the conversation. Given that the basis for pursuing disciplinary action was entirely based, according to Mr. Hall, on the fact that I refused to comply; and given that no facts exist to support that claim, no legitimate grounds existed for pursuing disciplinary action.

For the above stated reasons I request that the University Appeals Board review this case and take appropriate action.

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Thank you for your time and consideration.

Best regards,

Kara Spencer