



## University Senate TRANSMITTAL FORM

<b>Senate Document #:</b>	06-07-51
<b>PCC ID #:</b>	N/A
<b>Title:</b>	Review of the UMCP Procedures for Review of Alleged Arbitrary and Capricious Grading of Undergraduate Students
<b>Presenter:</b>	Charles Delwiche, Chair of Senate APAS Committee
<b>Date of SEC Review:</b>	January 19, 2010
<b>Date of Senate Review:</b>	February 3, 2010
<b>Voting (highlight one):</b>	On resolutions or recommendations one by one, or In a single vote To endorse entire report
<b>Statement of Issue:</b>	The goal of this proposal is to make changes to the current University policy on UMCP procedures for review of alleged arbitrary and capricious grading of undergraduate students.
<b>Relevant Policy # &amp; URL:</b>	III-1.20(B) UMCP PROCEDURES FOR REVIEW OF ALLEGED ARBITRARY AND CAPRICIOUS GRADING--UNDERGRADUATE STUDENTS as established in the Consolidated USMH & UMCP Policies and Procedures Manual <a href="http://www.president.umd.edu/policies/iii120b.html">http://www.president.umd.edu/policies/iii120b.html</a>
<b>Recommendation:</b>	The 2009-2010 APAS Committee recommends changes to University policy III-1.20(B) UMCP PROCEDURES FOR REVIEW OF ALLEGED ARBITRARY AND CAPRICIOUS GRADING--UNDERGRADUATE STUDENTS in order to create a more workable and effective process for handling and conducting such cases.
<b>Committee Work:</b>	On April 12, 2007, Dr. Kathy Beardsley, Assistant Dean of the College of Behavioral & Social Sciences, presented concerns about the University's procedures for review of alleged Arbitrary and Capricious Grading of undergraduate students at a Senate Executive Committee (SEC) meeting. The SEC voted to charge the Academic Procedures and Standards (APAS) Committee with examining the policy. A report was submitted by the 2007-2008 APAS Committee in response to the charge. Upon receipt, the SEC decided to have the Senate Chair and Chair-Elect meet with the Provost to discuss the suggested revisions.  On September 22, 2008, the SEC re-charged the new APAS

	<p>Committee with continued review of the policy. After research and revisions, the 2008-2009 APAS Committee submitted a report, which was voted on by the full Senate on April 6, 2009. The Senate voted to send the proposal back to committee for further review.</p> <p>The 2009-2010 APAS Committee re-focused on the text of the current policy at its first meeting on September 9, 2009. Over the course of the fall semester, APAS continued to research the issue by comparing the University’s current policy to those of our peer institutions, including: U. Illinois–Champagne, UNC Chapel Hill, UC Berkeley, UM Ann Arbor, UCLA, University of Wisconsin–Madison, Virginia Tech, and Rutgers. APAS also reviewed potential legal implications, as well as current rules and restrictions that impact these types of policies.</p> <p>Representatives from the Office of the Senior Vice President for Academic Affairs and Provost and the Office of Undergraduate Studies worked with APAS to develop language for proposed changes. The drafted language was also vetted through the President’s Legal Office. The committee met on December 9, 2009, at which time APAS voted unanimously in favor of putting forth proposed changes to the current policy. Following its presentation to the SEC, the committee met on January 27, 2010, to review and implement changes recommended by the SEC.</p>
<b>Alternatives:</b>	The text of the policy could remain as is currently written.
<b>Risks:</b>	There are no associated risks.
<b>Financial Implications:</b>	There are no financial implications.
<b>Further Approvals Required:</b> <i>(*Important for PCC Items)</i>	Senate Approval, Presidential Approval

## **APAS Committee Report**

### **Proposed Changes to the University Policy III-1.20(B) UMCP PROCEDURES FOR REVIEW OF ALLEGED ARBITRARY AND CAPRICIOUS GRADING— UNDERGRADUATE STUDENTS**

In its evaluation of the policy on Arbitrary and Capricious Grading, the APAS committee considered the existing policy, policies at peer institutions, information provided by the AAUP, advice of the Office of Legal Counsel and the Office of the Provost, and examples of known and hypothetical examples of Arbitrary and Capricious Grading. It is important to note that Arbitrary and Capricious Grading is clearly distinct from other forms of inappropriate grading, including discriminatory grading and sexual harassment, which are prohibited by law and are covered by other aspects of University policy. Arbitrary and Capricious Grading has been defined by the Board of Regents, and the APAS committee worked within the boundaries established by that definition. It is also important to note that Arbitrary and Capricious Grading is not necessarily malicious; there are a number of scenarios in which a well-intentioned (if misguided) instructor might commit Arbitrary and Capricious Grading.

It is vital that any policy on Arbitrary and Capricious grading protect the rights and interests of the affected student, the accused instructor, and the University as a whole as represented by the Administration. In reviewing the existing policy, the committee concluded that although there were a number of minor issues, the primary problem with the existing policy is that it asks a faculty committee both to determine whether or not Arbitrary and Capricious grading has occurred, and to implement a remedy. It was the sense of the Committee that a more effective set of checks and balances could be implemented if these responsibilities were clearly separated. Consequently, in the proposed new policy, a committee of tenured faculty evaluates the charge of Arbitrary and Capricious grading and, if it finds that there is reasonable evidence that such grading has taken place, recommends a menu of possible remedies. Responsibility for implementing the remedy is placed with the administration (represented by the Chair of the program). This avoids the potential complications of asking faculty to reprimand or discipline their peers, but also helps ensure the rights of the faculty by placing clear limits on the actions that can be taken by the administration.

It is important to note that out of respect for academic freedom, no instructor should ever be placed in the position of issuing a grade that they do not condone. Consequently, in cases of Arbitrary and Capricious Grading that result in a change to the grade (e.g. Pass/Fail), the student should be placed in a separate section of the class with a different instructor of record.

Other important issues considered by the committee include the possibility of requiring the review committee to include one or more student members or a representative from another department, and the timing of the complaint and its evaluation. The proposed policy is intended to provide flexibility so that it can be implemented in a wide range of campus contexts. The consensus was that the Chair formulating the committee should have broad latitude concerning the composition of the committee, but that given the gravitas of the

charges, it should be limited to tenured faculty at or above the rank of the accused instructor. The APAS Committee extensively discussed the potential advantages and disadvantages of placing a student on the committee. The APAS Committee noted that while some other nominally similar committees have student membership, this committee differs from most such committees in that it is charged with evaluating faculty performance. This is why the proposed policy requires that the committee be composed of tenured faculty at or above the level of the accused instructor, and to include a student on such a committee would potentially be problematic.

The current policy that a complaint must be filed within 20 working days of the start of the next regular semester was found to be reasonable, but the proposed policy requires that if the complaint has not been resolved by the end of that semester, the reason for the delay must be reported to the next higher administrative level. This is intended to provide a strong incentive for timely resolution of complaints without altogether prohibiting longer deliberations.

The committee unanimously supports the attached proposal. The proposed policy can be found in Appendix Two. Changes are marked in blue/bold font. For the purpose of clarity, the existing text was reformatted in some areas of the proposed policy; however, the intention of the text is not lost. Attached to this report are the following items:

- 1) Appendix One – Current University Policy
- 2) Appendix Two – Proposed Policy by the 2009-2010 APAS Committee
- 3) Appendix Three – Second Charge from Chair Kenneth Holum
- 4) Appendix Four – Original Charge from Chair William Montgomery

## Appendix One – Current University Policy



### Consolidated USMH & UMCP Policies and Procedures Manual

#### **III-1.20(B) UMCP PROCEDURES FOR REVIEW OF ALLEGED ARBITRARY AND CAPRICIOUS GRADING--UNDERGRADUATE STUDENTS**

APPROVED BY PRESIDENT DECEMBER 4, 1990

##### PURPOSE

The following procedures are designed to provide a means for undergraduate students to seek review of final course grades alleged to be arbitrary and capricious. Before filing a formal appeal, students are urged to resolve grievances informally with the instructor and/or the administrator of the academic unit offering the course. Students who file a written appeal under the following procedures shall be expected to abide by the final disposition of the appeal, as provided in Paragraph E, below, and shall be precluded from seeking review of the matter under any other procedure within the University.

##### DEFINITIONS

When used in these procedures:

- A. The term "arbitrary and capricious" grading means:
  1. the assignment of a course grade to a student on some basis other than performance in the course; or,
  2. the assignment of a course grade to a student by resorting to unreasonable standards different from those which were applied to other students in that course; or,
  3. the assignment of a course grade by a substantial, unreasonable and unannounced departure from the instructor's previously articulated standards.
- B. The words "day" or "days" refer to normal working days at the University, excluding Saturdays, Sundays and University holidays.
- C. The word "administrator" is defined as the administrative head of the academic unit offering the course.

##### PROCEDURES

A. A student who believes his/her final grade in a course is improper and the result of arbitrary and capricious grading should first confer promptly with the instructor of the course. If the instructor has left the University, is on approved leave, or cannot be reached by the student after a reasonable effort, the student shall consult with the administrator. If the student and the instructor or administrator are unable to arrive at a mutually agreeable solution, the student may file an appeal within twenty days after the first day of instruction of the next semester (excluding summer terms) to a standing committee consisting of three tenured faculty members of the academic unit offering the course. If the instructor of the course is a member of the committee, that instructor shall be disqualified and replaced by a tenured faculty member selected by the administrator.

B. The student shall file an appeal by submitting to the committee a written statement detailing the basis for the allegation that a grade was improper and the result of arbitrary and capricious grading, and presenting relevant evidence. The appeal shall be dismissed if:

1. the student has submitted the same, or substantially the same complaint to any other formal grievance procedure; or,
2. the allegations, even if true, would not constitute arbitrary and capricious grading;
3. the appeal was not timely; or,
4. the student has not conferred with the instructor or with the instructor's immediate administrative supervisor, in accordance with Paragraph A of these procedures.

C. If the appeal is not dismissed, the committee shall submit a copy of the student's written statement to the instructor with a request for a prompt written reply. If it then appears that the dispute may be resolved without recourse to the procedures specified in Paragraph D, below, the committee will attempt to arrange a mutually agreeable solution.

D. If a mutually agreeable solution is not achieved, the committee shall proceed to hold an informal, non-adversarial fact-finding meeting concerning the allegations. Both the student and the instructor shall be entitled to be present throughout this meeting and to present any relevant evidence, except that the student shall not be present during the discussion of any other student. Neither the student nor the faculty member shall be accompanied by an advocate or representative. The meeting shall not be open to the public.

E. The committee shall deliberate privately at the close of the fact-finding meeting. If a majority of the committee finds the allegation supported by clear and convincing evidence, the committee shall take any action which they feel would bring about

substantial justice, including, but not limited to:

1. directing the instructor to grade the student's work anew; or
2. directing the instructor to administer a new final examination or paper in the course; or
3. directing the cancellation of the student's registration in the course; or
4. directing the award of a grade of "pass" in the course, except that such a remedy should be used only if no other reasonable alternative is available. The committee is not authorized to award a letter grade or to reprimand or otherwise take disciplinary action against the instructor. The decision of the committee shall be final and shall be promptly reported in writing to the parties. The administrator of the academic unit shall be responsible for implementing the decision of the committee.

## Appendix Two – Proposed Policy Changes (in blue/bold font)

### III-1.20(B) UMCP PROCEDURES FOR REVIEW OF ALLEGED ARBITRARY AND CAPRICIOUS GRADING--UNDERGRADUATE STUDENTS

#### PURPOSE

The following procedures are designed to provide a means for undergraduate students to seek review of final course grades alleged to be arbitrary and capricious. Before filing a formal appeal, students are urged to resolve grievances informally with the instructor and/or the administrator of the academic unit offering the course. Students who file a written appeal under the following procedures are expected to abide by the final disposition of the appeal, as provided **for in paragraph H**, below, and may not seek review of the matter under any other procedure within the University.

#### DEFINITIONS

When used in these procedures:

A. The term "arbitrary and capricious" grading means:

1. the assignment of a course grade to a student on some basis other than performance in the course; or,
2. the assignment of a course grade to a student by resorting to unreasonable standards different from those which were applied to other students in that course; or,
3. the assignment of a course grade by a substantial, unreasonable and unannounced departure from the instructor's previously articulated standards.

B. The words "day" or "days" refer to normal working days at the University, excluding Saturdays, Sundays and University holidays.

**C. The word "Instructor" unless otherwise specified refers to the instructor accused of arbitrary and capricious grading.**

**D. The word "Chair" refers here to the head of the administrative unit offering the class. In most cases this will be the Chair of the Department. In the case of non-departmentalized units and interdepartmental programs, this role should be taken by the Dean (or the Dean's designee).**

**E. The word "Committee" refers here to the committee charged with reviewing the appeal.**

#### CONFLICT OF INTEREST



**Every effort should be made to avoid conflicts of interest. Participants in the review process must identify and report potential conflicts of interest to the next higher administrative level. The next higher-level administrator is responsible for ensuring that conflicts of interest do not compromise the appeal process, and for appointing substitutes as needed to ensure fairness of the process. Under no circumstances may an instructor accused of arbitrary and capricious grading serve on the committee that evaluates the charge. If the accused instructor is the Chair then the student should consult with the Dean.**

## PROCEDURES

A. A student who believes his or her final grade in a course is improper and the result of arbitrary and capricious grading should confer promptly with the instructor of the course. If the instructor has left the University, is on approved leave, or cannot be contacted by the student after a reasonable effort, the student should **contact the Chair**.

B. If the student and the instructor are unable to arrive at a mutually agreeable solution, the student may file an appeal **to the Chair**. The appeal must be a written statement that details the basis for the allegation that a grade was the result of arbitrary and capricious grading and presents evidence that supports the allegation.

1. Appeals must be filed within 20 working days after the first day of instruction of the next regular semester.

**2. The Chair is responsible for ensuring that the appeal is evaluated in a timely manner and should be sensitive to the potential impact a delay could have on the student. Any delay beyond the last day of the semester in which the appeal was filed must be reported and justified to the next higher administrative level.**

C. The appeal may be dismissed **administratively** if:

1. the student has submitted the same, or substantially the same complaint to any other formal grievance procedure; or,

2. the allegations, even if true, would not constitute arbitrary and capricious grading; or,

3. the appeal was not timely; or,

4. the student has not **made a good-faith effort to** confer with the instructor or with the instructor's immediate administrative supervisor as described above.

**D. The Chair shall refer the case to** a committee consisting of **at least** three tenured faculty members **at a rank equal or superior to that of the instructor. As appropriate within the context of the academic unit, this committee may be a**

**standing committee, or may be appointed *ad hoc*. The committee should be formulated to provide fair and unbiased consideration of the case, and the charge to the committee should remind them of this responsibility.**

E. The committee shall provide a copy of the student's written statement to the instructor with a request for a prompt written reply. **Unless otherwise specified by the committee, the Instructor must provide a written reply within ten working days of the committee's request.**

1. If the opportunity for informal resolution of the dispute arises, the committee **is authorized and encouraged to mediate** such informal resolution.

F. If a mutually agreeable solution is not achieved, the committee shall convene a fact-finding meeting with both the instructor and student. This meeting should be conducted in as non-adversarial a manner as possible. **If specific circumstances make a meeting with both instructor and student impractical, the committee may make reasonable accommodations in the interest of a fair and speedy resolution of the case.**

1. Neither the student nor the instructor may be accompanied by an advocate or representative.

2. The meeting is not open to the public.

**G. The committee is responsible for determining whether the case in question constitutes arbitrary and capricious grading, and if so, what potential remedies exist.** The deliberations of the committee are to be private and confidential. A finding of arbitrary and capricious grading is made if the majority of the committee finds the allegation to be supported by clear and convincing evidence. **The findings of the committee shall be reported to the Chair.**

1. **The report should include the findings of the committee, the vote count, and an explanation of the basis for dissenting opinions, if any. It should include a brief summary of the particulars of the case, including any aggravating or mitigating circumstances.**

2. **If the committee finds that arbitrary and capricious grading has taken place, then the report must include two or more alternative remedies to be implemented by the Chair. These remedies must be chosen to represent the best interests of the student and must include one of the following (but other remedies may also be recommended):**

- a. Cancellation of the student's registration in the class.

- b. **Opening a new section of the class and allowing the student to satisfy its requirements by examination alone, with the exam administered by a disinterested member of the faculty.**

- c. **Opening a new section of the class and** awarding a grade of "Pass."

**3. If the committee fails to specify more than one alternative remedy, then the available remedies should be interpreted to be any of those listed above.**

H. The Chair (or acting administrator) shall be responsible for implementing a remedy if the committee finds that the case constitutes arbitrary and capricious grading. **The Chair should communicate the findings of the committee to the student affected by the decision, and if appropriate should solicit his or her input when considering possible solutions.**

**1. No administrator may overrule the grade issued by an instructor without a finding by the committee of arbitrary and capricious grading.**

**2. Only those remedies that were recommended by the committee are available to the Chair. It is acceptable for the Chair and committee to communicate, but the chair is expected to respect the independence of the committee. If the Chair prefers a remedy that was not suggested by the committee, she or he may request a revised report that includes that remedy. However, the committee is free to decline such a request.**

**3. Under no circumstances may an instructor be listed as the instructor of record for a grade that they do not condone. If the finding of the Committee, as endorsed by the chair, calls for a new grade to be issued, then provision must be made to enroll the student in a different section of the class.**

**4. The Chair shall convey the report of the committee, along with a cover letter identifying the remedy selected, to the next higher administrative level.**




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UNIVERSITY SENATE

September 22, 2008

TO: Claire Moses  
Chair, Senate Academic Procedures and Standards Committee

FROM: Kenneth G. Holum   
Chair, University Senate

SUBJECT: UMCP Policy on Review of Alleged Arbitrary and Capricious Grading of Undergraduate Students (Senate Document Number 06-07-51)

As the enclosed documents reveal, in the fall of 2007 the APAS Committee, under the leadership of Gay Gullickson, conducted a review of the policy on arbitrary and capricious grading, as charged by the SEC and Chair William Montgomery in his memorandum of August 27, 2007. Professor Gullickson submitted her report, recommending a revised policy, on December 4, 2007, and the SEC discussed the proposed revisions in its meeting on December 13, 2007. After discussion, the SEC voted to return the revised policy to the APAS committee for further consideration, but no further action was taken in the spring of 2008.

As the minutes of December 13 make clear, the SEC raised several major concerns with the proposed policy revisions:

- What were the specific rationales for adding a faculty member from outside the Department and two students to the grievance committee?
- What was the rationale for giving the grievance committee, now including student members, the power to award a passing grade? Should a committee, as opposed to a faculty member, have the power to award a grade?
- More generally, should students, in a close case, be able to determine a passing grade for another student? Is grading not a faculty responsibility?
- The proposed policy empowers the grievance committee "to take any action it feels will bring about substantial justice, including, but not limited to..." Does this language not go much too far, giving the committee the right (for example) to change a low grade to an A?

At the beginning of the new semester, I therefore request that the APAS committee reconsider the proposed revisions to the policy on arbitrary and capricious grading, bearing in mind the concerns that the SEC raised in its meeting on December 13, 2007. I ask that you submit your report and recommendations to the Senate Office no later than December 12, 2008. If you have questions or need assistance, please contact Reka Montfort in the Senate Office, extension 5-5804.

KGH/rm

Enclosures



# UNIVERSITY OF MARYLAND

UNIVERSITY SENATE

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August 27, 2007

## MEMORANDUM

**TO:** Gay Gullickson  
Chair, Senate Academic Procedures and Standards Committee

**FROM:** William Montgomery  
Chair, University Senate

**SUBJECT:** Review of the UMCP Procedures for Review of Alleged Arbitrary  
and Capricious Grading of Undergraduate Students  
(Senate Document Number 06-07-51)

Assistant Dean Katherine Beardsley met with the Senate Executive Committee in the spring to present her concerns about the university's Procedures for Review of Alleged Arbitrary and Capricious Grading of Undergraduate Students. Dr. Beardsley discussed cases where excellent undergraduate students had received a grade that was in marked variance with their other grades. In the College of Behavioral and Social Sciences the policy, as written, had failed to remedy egregious cases where faculty committees had found arbitrary and capricious grading.

Dr. Beardsley maintained that the policy, first established in 1990, has proven unworkable. For this reason, the President's Legal Office had approved an administrative process that circumvents the policy by granting a dean the authority to enroll an undergraduate in an independent study course to replace the course in dispute. This administrative solution could only be implemented when a faculty committee, on the basis of clear and convincing evidence, concludes a grade is capricious or arbitrary. Some members of the Executive Committee believed that Dr. Beardsley made a compelling argument for a revision of the policy even though there are few appeals. In part, the committee decided to initiate a review because it seemed unwise to have a Senate policy that administrators were able to abrogate.

The Executive Committee voted to charge the Academic Procedures and Standards Committee with examining the language and the regulations of the policy to see whether a revision or a clarification is warranted. Please consider the following questions in your deliberations:

- Who is the responsible administrator in cases of arbitrary and capricious grading? Is it the dean, the chair, or the director of undergraduate studies within the department offering the course?

- According to the present policy, the composition of the committee reviewing the grade is composed of three tenured faculty members of the academic department offering the course. Should a faculty member from outside the department also be included?
- If a grade is found to be arbitrary and capricious, the faculty committee is given in section E of the policy the right to make a ruling. However, the instructor of the course can ignore the ruling. Should he or she be held harmless for refusing to acknowledge the decision of the committee?
- According to the procedures laid down in this policy, a student has 20 days to appeal a grade after the start of the next semester. Is this 20-day period sufficient?
- Please look at the practices of other universities, particularly our peers. Do they have policies or procedures on capricious grading? If so, could they serve as models for revising the University of Maryland's policy and procedures?

The Executive Committee also welcomes consideration of any other issues that the Committee on Academic Procedures and Standards thinks are relevant to a complete examination of the UMCP Procedures for Review of Alleged Arbitrary and Capricious Grading of Undergraduate Students. Although I realize this charge to your committee is extensive, would you, if possible, submit your committee's recommendations by Wednesday, February 27, 2008, to the Senate Office. If you have any questions or need assistance, please call Dr. Mary Giles on extension 5-5804.

WLM:mdg

✓ cc: Vera McCoy-Espinoza

Enclosure