



NATIONAL HEADQUARTERS CIVIL AIR PATROL

CAP REGULATION 35-8

DRAFT

Personnel Procedures

MEMBERSHIP ACTION REVIEW BOARD

This regulation creates a Membership Action Review Board (MARB) to review cases where members are removed from unit command, are demoted, have their membership suspended for more than 60 days due to regulatory infractions or misconduct not giving rise to a criminal investigation or criminal charges or proceedings, or have their membership terminated. In accordance with this regulation, members who have been subject to such adverse membership action, and have exhausted all administrative remedies shall have the right to appeal the action to the MARB. This regulation does not apply to removal of the National Commander or the National Vice-Commander.

SUMMARY OF CHANGES.

This revision updates the membership of the MARB, changes the office of primary responsibility, clarifies the MARB's ability to accept cases, requires submission of candidate qualifications to the Board of Governors prior to selection, and deletes all references to nonrenewal actions. **Note: Shaded areas identify new or revised material.**

AUTHORITY: Constitution of the Civil Air Patrol, Article XVI, amended, 7 June 2011.

1. POLICY.

a. The Membership Action Review Board is independent from the Civil Air Patrol (CAP) volunteer chain of command. It was created to ensure compliance with CAP regulations and appropriate practices. The MARB does this by adjudicating member appeals of final adverse membership actions.

b. The MARB shall accept an appeal of a final adverse membership action only if the MARB, by majority vote, determines after its initial review of the materials that there exists sufficient credible evidence and documentation within the appellant's material that, if true, would establish that the action was motivated by retaliation, reached without due process, or involved a material failure to follow applicable CAP regulations.

c. Meetings of the MARB shall convene as needed at the direction of the Chairman at a time and manner determined by the Chairman.

d. If a member has designated a representative in a signed written statement, all correspondence regarding the case shall be solely with the representative until the member notifies the MARB in writing of any changes.

Supersedes: CAPR 35-8, 23 April 2009.

Distribution: National CAP website.

OPR: DP

Approved by:

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e. The Chairman of the MARB may revoke, amend, or waive any provision of this regulation for good cause unless Article XVI of the CAP Constitution requires application of the provision. The Chairman of the MARB must give notice of the waiver to all parties, but is not required to give the parties an opportunity to respond.

f. In cases where the MARB accepts the appeal, the decisions and any written opinion and/or ruling of the MARB are final and not subject to further appeal or proceedings within CAP. In cases where the MARB determines that it will not hear the appeal, the determination not to accept or hear the appeal is final and not subject to further appeal or proceedings within CAP.

2. DEFINITIONS.

a. "Due process" means (1) notice of the adverse action, an explanation of the adverse evidence and an opportunity to present the member's position or (2) a legitimate CAP interest or regulatory provision that results in an unfair or arbitrary treatment of an individual. Commanders have discretion in matters of demotion or removal from command. Those matters will be considered arbitrary or unfair only when shown to be retaliatory.

b. "Material failure to follow applicable CAP regulations" means an error which is likely to have caused the commander(s) to reach a conclusion different from the one the commander(s) would have reached in the absence or cure of the error.

c. "Member" unless referring to a member of the MARB, refers to the member who is appealing a final adverse membership action under this regulation.

d. "Quorum" means a majority of the voting members of the MARB.

e. "Retaliation" means taking or threatening to take an unfavorable membership action or withholding or threatening to withhold a favorable membership action from a member because of an action taken or not taken by the member, where such action or inaction did not violate any CAP regulation.

3. MARB MEMBERS.

a. The Membership Action Review Board shall consist of

- (1) the National Legal Officer and
- (2) eight active senior members, in the grade of colonel, not serving as commander or vice commander at any level.

b. The eight active senior members specified under paragraph 3a above will be appointed by the National Commander, from a list of candidates provided by each region commander. Qualifications of the appointed candidate will be submitted to the Board of Governors for confirmation. Members will serve a term of 4 years. Terms will be staggered with two new members appointed each year. If a MARB member is removed or resigns prior to the end of his or her term, a new representative will be selected to complete the original term in order to preserve the staggered terms. Only the Board of Governors may remove a member from the MARB prior to the expiration of his or her established term.

c. A designee may serve as a member of the MARB only in the event the named member is unable to participate due to a conflict of interest. The designee must meet the membership requirements of the MARB.

d. The National Legal Officer or his/her designee (who must be a duly appointed CAP legal officer) shall serve as non-voting Chairman.

4. SUPPORT. The Office of the Chief of Personnel and Member Actions:

- a. Enters petitions for review onto the MARB's docket and monitors their processing.
- b. Provides information on the status of cases.
- c. Distributes copies of MARB decisions and publications.
- d. Manages the MARB's records, and correspondence.
- e. Forwards documents to the MARB, parties, and others (if any) as required.

5. JURISDICTION AND DECISIONS.

a. The MARB has jurisdiction over appeals from unit commanders' final adverse membership actions, which concern

- (1) demotion in grade;
- (2) removal from command of a region, wing, group, squadron, or flight;
- (3) suspension of membership in excess of 60 days due to regulatory infractions or misconduct not giving rise to a criminal investigation or criminal charges or proceedings; or
- (4) termination of membership.

b. Failure to pursue all available administrative appeals shall be a waiver of appeal to the MARB.

c. For cases in which the MARB determines that it will not hear the appeal, a written statement of that determination shall be provided. Further written findings, rulings and/or opinions may be rendered, but are not required.

d. The MARB shall render a written decision in properly filed cases which it accepts for hearing brought by an aggrieved member or ex-member when the MARB determines the final adverse membership action against the aggrieved member or ex-member was motivated by retaliation, reached without due process, or involved a material failure to follow applicable CAP regulations. The MARB may affirm, reverse, or modify in favor of the member the final adverse membership action. At the discretion of the MARB, the case may be remanded to any commander(s) to correct any failure of due process or material failure to follow applicable CAP regulations.

e. A MARB member shall not consider a review from an applicant from the region he/she represents. If the individual appealing to the MARB is assigned at the National level, all eight voting members will participate in the appeal. Five voting members shall constitute a quorum. Decisions shall be made in all cases by majority vote. In the event of a tie vote on any appeal action, the MARB will automatically sustain the commander's action.

f. The member shall have the burden of convincing the MARB that it is more likely than not that the action was motivated by retaliation, reached without due process, or involved a material failure to follow applicable regulations.

6. INITIAL PROCEDURES.

a. All correspondence with the MARB may be filed by mail, facsimile, commercial delivery, or personal delivery to the Office of Chief of Personnel and Member Actions.

b. A member or his/her designated representative must file an appeal of a final adverse membership action within 60 days of the later of the date or the effective date of the adverse membership action. Appeals may be in any format, including letter form, but must contain:

(1) The name, address, and telephone number of the member and designated representative, if any.

(2) If filed by a designated representative, a statement of designation signed by the member.

(3) A copy of the adverse membership action, any and all appeals, and all relevant supporting documentation.

(4) A statement of why the member believes the adverse membership action was motivated by retaliation, reached without due process, or involved a material failure to follow applicable CAP regulation.

(5) A statement of the relief requested.

(6) The signature of the member or designated representative.

c. The MARB shall perform an initial review of the appeal filed by the member or his/her representative. The MARB will make a determination that the filing is a result of a final adverse membership action and that:

(1) The filing is complete.

(2) The filing is timely.

(3) There is an allegation that the adverse membership action was motivated by retaliation, reached without due process, or involved a material failure to follow applicable CAP regulations.

d. If the MARB determines that any of the requirements stated in items (1) through (3) above are not met, the MARB, in its sole discretion may:

(1) Return the submission to the member with leave to amend or cure the submission;

(2) Dismiss the appeal, with finality; or

(3) Elect to decide the case.

7. GENERAL CASE PROCEDURES.

a. Once an appeal has been accepted for hearing by the MARB, the MARB will advise the Chief of Personnel and Member Actions who will forward a copy of the appeal, with all supporting documentation, to the commander who took the adverse membership action and the commander(s) to whom an administrative appeal was made. The commander(s) shall have 30 days from the date documents were forwarded in which to respond to the allegation that the action was motivated by retaliation, reached without due process, or involved a material failure to follow applicable CAP regulations.

b. A response from the current incumbent of the position held by the commander who took the adverse membership action or the commander(s) to whom an administrative appeal was made shall be treated as if made by the person who took the action or received the administrative appeal.

c. In the event that any of the commanders do not respond, the MARB shall proceed on the basis of the member's submission and any responses received.

d. The commanders' responses, if any, will be forwarded to the member who shall have 30 days to respond.

e. Deliberations.

(1) The MARB shall grant relief only if it determines that the member has proven that more likely than not, the final adverse membership action

(a) was motivated by retaliation or

(b) the decision was

1 reached without due process or

2 involved a material failure to follow applicable CAP regulations.

(2) If the MARB grants relief, it may

(a) reverse the membership action;

(b) modify the membership action in favor of the member; or

(c) remand to any commander(s) to correct any failure of due process or material failure to follow applicable CAP regulations.

f. The MARB will normally decide the appeal on the basis of the submitted documentation. However, the MARB may request an administrative hearing solely for the purpose of obtaining evidence to support the allegation that the action was motivated by retaliation, reached without due process, or involved a material failure to follow applicable CAP regulations. If the MARB, in its discretion, decides to hold a hearing:

(1) Appearances at the hearing are voluntary and shall be without cost to CAP.

(2) The hearing will be informal. Procedure shall be at the discretion of the Chairman.

(3) Parties may present witnesses and/or documentary evidence. There is no requirement that a witness list or documents be provided to the MARB or to the other parties prior to the hearing. There shall be no formal rules of evidence and the Chairman shall have discretion to allow or deny the presentation of evidence.

g. The Chairman of the MARB may initiate attempts to settle appeals informally at any time before the MARB renders a decision. If the parties agree on a settlement, the settlement agreement is the final and binding resolution of the appeal and the Chairman of the MARB will dismiss the appeal with prejudice after entering the agreement in the case record.

8. DISQUALIFYING A MEMBER OF THE MARB.

a. If participation by a member of the MARB presents a conflict of interest, he or she shall withdraw from the case, by immediately notifying the Chairman of the MARB and stating the reasons for doing so in the case record.

b. Any party to the case may file a written request with the Chairman of the MARB asking for the disqualification of any member of the MARB on the basis of a conflict of interest as soon as the party has reason to believe there is a basis for disqualification. If the Chairman denies the request, the party may file the request within 10 days to the full MARB and the matter will be decided by a majority vote.

c. If any party files a written request with the Chairman of the MARB asking for a withdrawal of the Chairman on the basis of a conflict of interest, and the Chairman refuses to disqualify himself/herself, the remaining members of the MARB shall determine if the Chairman shall be disqualified.

9. ACTIONS AND REPORTS.

a. The Chief of Personnel and Member Actions shall keep records of all MARB cases for 5 years.

b. The National Legal Officer shall make an annual report to the Board of Governors on the activities and proceedings of the MARB.

c. Final decisions of the MARB, including the names and units of the parties, a brief description of the case and the decision of the MARB shall be published periodically in *VolunteerNow* or another publication of general CAP circulation. The names of cadets will be withheld from publication. A copy of the final MARB decision will also be sent to each commander in the member's chain of command.

d. MARB cases settled before the MARB renders a decision shall not be published.