

AP 5530 Student Rights and Grievances

Reference:

Title IX, Education Amendments of 1972; Education Code Section 76224(a)

The purpose of this procedure is to provide a prompt and equitable means of resolving student grievances. A grievable action is defined under Definitions. These procedures shall be available to any student who reasonably believes a College decision or action has adversely affected his or her status, rights or privileges as a student. The procedures shall include, but not be limited to, grievances regarding:

- Course grades, the extent permitted by Education Code Section 76224(a), which provides: “When grades are given for any course of instruction taught in a community college District, the grade given to each student shall be the grade determined by the instructor of the course and the determination of the student’s grade by the instructor, in the absence of mistake, fraud, bad faith, or incompetence, shall be final.”
- Financial aid
- The exercise of rights of free expression protected by state and federal constitutions and Education Code Section 76120.

This procedure does not apply to:

- Student disciplinary actions, which are covered under separate Board policies and Administrative Procedures.
- Police citations (i.e. “tickets”); complaints about citations must be directed to the County Courthouse in the same way as any traffic violation.
- Sexual discrimination as prohibited by Title IX of the Higher Education Amendments of 1972 (see Board Policy and Procedures 3410)
- Sexual harassment (see Board Policy and Procedures 3410)
- Illegal discrimination (see Board Policy and Procedures 3410)

Non-Grievable Items

- Grades, except with evidence of:

Mistake: unintentional error on the part of the instructor.

Fraud: intentional misrepresentation of any or all facts, which lead to a negative outcome.

Bad Faith: includes fraud and any other intentional act of the instructor, which negatively impacts the grade of the student.

Incompetence: there is evidence that the instructor does not have the knowledge, skills and/or abilities to conduct and fairly grade the course. Incompetence is usually pervasive, and not restricted to one student or one incident.

- Acts by another student (See Student Code of Conduct)

- Acts which, though deemed unfair, do not have a specific negative impact on the student. Included among non-grievable issues are situations which are deemed to be petty or to have no significant negative impact upon the student in question.
- Acts which affect another student. Only the student affected by an act may file a grievance. A student may not file on behalf of another student.

Under no circumstances shall the filing of a grievance result in retaliation by the party being grieved against or by his/her department.

Definitions

Grievable Action: A violation of written campus policies or procedures, or an action that constitutes arbitrary, capricious or unequal application of written campus policies or procedures.

Party: The student or any persons claimed to have been responsible for the student's alleged grievance, together with their representatives. "Party" shall not include the Student Rights Board or the College Grievance Officer.

Student: A currently enrolled student, a person who has filed an application for admission to the college, or a former student. A grievance by an applicant shall be limited to complaint regarding denial of admission. Former students shall be limited to grievances relating to course grades to the extent permitted by Education Code Section 76224a.

Respondent: Any person claimed by a grievant to be responsible for the alleged grievance.

Day: Unless otherwise provided, day shall mean a day during which the College is in session and regular classes are held, excluding Saturdays and Sundays.

Informal Resolution

Each student who has a grievance shall make a reasonable effort to resolve the matter on an informal basis prior to requesting a grievance hearing and shall attempt to solve the problem with the person with whom the student has the grievance.

- Students having a complaint against another student or a counselor may take the complaint to the Executive Director of Student Success
- Students having a complaint against a faculty member may take the complaint to the Executive Director of Student Success or the Vice President for Academic and Student Success.
- Students having a complaint against an administrator may take the complaint to the College President.
- Students having a complaint against a non-academic staff member may take the complaint to the Human Resources Officer.

The Vice President for Academic and Student Success shall appoint an employee who shall assist students in seeking resolution by informal means. This person shall be called the Grievance Officer. The Grievance Officer and the student may also seek the assistance of the Associated Student Body in attempting to resolve a grievance informally.

Informal meetings and discussion between persons directly involved in a grievance are essential at the outset of a dispute and should be encouraged at all stages. An equitable solution should be sought before persons directly involved in the case have stated official or public positions that might tend to polarize the dispute and render a solution more difficult. At no time shall any of the persons directly or indirectly involved in the case use the fact of such informal discussion, the fact that a grievance has been filed, or the character of the informal discussion for the purpose of strengthening the case for or against persons directly involved in the dispute or for any purpose other than the settlement of the grievance.

Any student who believes he or she has a grievance shall file a Statement of Grievance with the Grievance Officer within ten (10) days of the incident on which the grievance is based, or ten (10) days after the student learns of the basis for the grievance, whichever is later. The Statement of Grievance must be filed whether or not the student has already initiated efforts at informal resolution, if the student wishes the grievance to become official. Within two days following receipt of the Statement of Grievance Form, the Grievance Officer shall advise the student of his or her rights and responsibilities under these procedures, and assist the student, if necessary, in the final preparation of the Statement of Grievance form.

If at the end of ten (10) days following the student's first meeting with the Grievance Officer, there is no informal resolution of the complaint which is satisfactory to the student, the student shall have the right to request a grievance hearing.

Student Rights Board

The Student Rights Board will hear all grievance petitions. The Vice President for Academic and Student Success shall at the beginning of each semester, including any summer session, establish a standing panel of nine (9) members of the college community, including three (3) students, three (3) faculty members and three (3) administrators, from which one or more Student Rights Boards may be appointed. The Student Rights Board will be established with the advice and assistance of the Associated Student Body and the Academic Senate, who shall each submit three (3) names to the Vice President for Academic and Student Success for inclusion on the panel. A Student Rights Board shall be constituted in accordance with the following:

- It shall include one student, one instructor and one college administrator selected from the panel above.
- No person shall serve as a member of a Student Rights Board if that person has been personally involved in any matter giving rise to the grievance, has made any statement on the matters at issue or could otherwise not act in a neutral manner. Any party to the grievance may challenge for cause any member of the hearing committee prior to the beginning of the hearing by addressing a challenge to the Vice President for Academic and Student Success who shall determine whether cause for disqualification has been shown. If the Vice President feels that sufficient grounds for removal of a member of the committee has been presented, he/she shall remove the challenged member or members and substitute a member or members from the panel described above. This determination is subject to appeal as defined below.
- The Grievance Officer shall sit with the Student Rights Board but shall not serve as a member nor vote. The Grievance Officer shall coordinate all scheduling of hearings, shall serve to assist all parties

and the Hearing Committee to facilitate a full, fair and efficient resolution of the grievance, and shall avoid an adversarial role.

Request for Grievance Hearing

Any request for a grievance hearing shall be filed on a Request for a Grievance Hearing within fifteen (15) days after the first meeting with the Grievance Officer as described above.

Within ten (10) days following receipt of the Request for Grievance Hearing, the Vice President for Academic and Student Success shall appoint a Student Rights Board as described above, and the Student Rights Board shall meet in private and without the parties present to select a chair and to determine on the basis of the Statement of Grievance whether it presents sufficient grounds for a hearing.

The determination of whether the Statement of Grievance presents sufficient grounds for a hearing shall be based on the following:

- The statement contains facts which, if true, would constitute a grievance under these procedures.
- The grievant is a student as defined in these procedures, which include applicants and former students;
- The grievant is personally and indirectly affected by the alleged grievance;
- The grievance was filed in a timely manner;
- The grievance is not clearly frivolous, clearly without foundation, or clearly filed for purposes of harassment.

If the grievance does not meet each of the requirements, the Hearing Committee chair shall notify the student in writing of the rejection of the Request for a Grievance Hearing, together with the specific reasons for the rejection and the procedures for appeal. This notice will be provided within 5 days of the date the decision is made by the Grievance Committee.

If the Request for Grievance Hearing satisfies each of the requirements, the College Grievance Officer shall schedule a grievance hearing. The hearing will begin within ten (10) days following the decision to grant a Grievance Hearing. All parties to the grievance shall be given not less than five (5) days of notice of the date, time and place of the hearing.

Hearing Procedures

The decision of the Student Rights Board chair shall be final on all matters relating to the conduct of the hearing unless there is a vote of a majority of the other members of the panel to the contrary.

The members of the Student Rights Board shall be provided with a copy of the grievance and any written response provided by the respondent before the hearing begins.

Each party to the grievance may call witnesses and introduce oral and written testimony relevant to the issues of the matter.

Formal rules of evidence shall not apply. Any relevant evidence shall be admitted.

Unless the Student Rights Board determines to proceed otherwise, each party of the grievance shall be permitted to make an opening statement. Thereafter, the grievant or grievants shall make the first presentation, followed by the respondent or respondents. The grievant(s) may present rebuttal evidence after the respondent(s)' evidence. The burden shall be on the grievant or grievants to prove by substantial evidence that the facts alleged are true and that a grievance has been established as specified above.

Each party to the grievance may represent him or herself, and may also have the right to be represented by a person of his or her choice; except that a party shall not be represented by an attorney unless, in the judgment of the Student Rights Board, complex legal issues are involved. If a party wishes to be represented by an attorney, a request must be presented not less than ten (10) days prior to the date of the hearing. If one party is permitted to be represented by an attorney, any other party shall have the right to be represented by an attorney. The hearing committee may also request legal assistance through the President. Any legal advisor provided to the hearing committee may sit with it in an advisory capacity to provide legal counsel but shall not be a member of the panel nor vote with it.

Hearings shall be closed and confidential unless all parties request that it be open to the public. Any such request must be made no less than three (3) days prior to the date of the hearing.

In a closed hearing, witnesses shall not be present at the hearing when not testifying, unless all parties and the committee agree to the contrary.

The hearing shall be recorded by the Grievance Officer either by tape recording or stenographic recoding, and shall be the only recording made. No witness who refuses to be recorded may be permitted to give testimony. In the event the recording is by tape recording, the Student Rights Board Chair shall, at the beginning of the hearing, ask each person present to identify themselves by name, and thereafter shall ask witnesses to identify themselves by name. The tape recording shall remain in the custody of the District at all times, unless released to a professional transcribing service. Any party may request a copy of the tape recording. Grievance hearing records shall be maintained for three years.

All testimony shall be taken under oath; the oath shall be administered by the Student Rights Board Chair. Written statements of witnesses under penalty of perjury shall not be used unless the witness is unavailable to testify. A witness who refuses to be tape recorded shall be considered unavailable.

Within ten (10) days following the close of the hearing, the Student Rights Board shall prepare and send to the Vice President for Academic and Student Success a written decision. The decision shall include specific factual findings regarding the grievance, and shall include specific conclusions regarding whether a grievance has been established as defined above. The decision shall also include a specific recommendation regarding the relief to be afforded the grievant, if any. The decision shall be based only on the record of the hearing, and not on matters outside of that record. The record consists of the original grievance, any written response, and the oral and written evidence produced at the hearing.

Vice President's Decision

Within five (5) days following receipt of the Student Rights Board's decision and recommendation(s), the Vice President for Academic and Student Success shall send to all parties his or her written decision, together with the Hearing Committee's decision and recommendations. The Vice President for Academic and Student Success may accept or reject the findings, decisions and recommendations of the Hearing

Committee. The factual findings of the Hearing Committee shall be accorded great weight; and if the Vice President for Academic and Student Success does not accept the decision or a finding or recommendation of the Hearing Committee, he/she shall review the record of the hearing, and shall prepare a new written decision which contains specific factual findings and conclusions.

Appeal

If either party is dissatisfied with the Vice President's decision, an appeal of the decision may be made to the District President within five (5) days. The President may accept the decision of the Student Rights Board, modify the decision of the Board or veto the decision and make a different decision. If either party is dissatisfied with the President's decision, a written appeal may be made to the Board of Trustees within five (5) days. The Board of Trustees shall review the record at its next regular public or executive session meeting and shall make a final determination on the matter within 35 days. The Board's decision will be final.

In the event of disciplinary action against an employee of the District or a student, the statutes of the state, the negotiated contract, policy and regulations of the District shall apply with equal consideration to each employee or student.

Time Limits

Any time specified in these procedures may be shortened or lengthened if there is mutual concurrence by all parties. If the grieved party does not respond within the time limits defined herein, the grievance is considered terminated and no further action will be taken.