

Administrative Procedures 5095

Chapter 5 - Student Services

STUDENT DISCIPLINARY PROCEDURES

1. PURPOSE

These procedures are designed to provide uniform standards to assure due process when a student is charged with a violation of San Jose Evergreen Community College District Student Code of Conduct as defined in Policy 5040. All proceedings held in accordance with these procedures shall relate only to an alleged violation of the established standards.

2. DISCIPLINARY OFFICER

- a. Each President will designate an administrator to process student disciplinary charges and serve as the Disciplinary Officer.
 - 1) The Disciplinary Officer shall be responsible for processing the alleged violation of the Student Code of Conduct in accordance with these procedures.
 - 2) If the student has an actual or perceived disability and the behavior is not a violation of the Student Code of Conduct, the Disciplinary Officer will consult with a DSPS counselor to determine: if (1) the student is receiving services through the DSPS office, (2) there is an accommodation that could mitigate the behavior, (3) a referral for professional services is appropriate.

3. FACT FINDING INVESTIGATION

The Discipline Officer shall conduct a fact finding investigation within fifteen(15) working days from the time the Officer is informed of allegations of a violation of the Student Code of Conduct, to determine whether to pursue an administrative conference or disciplinary hearing. The investigation shall be documented as follows:

- 1) Interview with the student accused of the violation to gather facts, assuming the student is willing and available to participate. The interview shall be carefully documented as follows: Date of interview; Description of incident; Name of witnesses; Location of incident; Any mitigating factors.
- 2) Based upon information obtained in the interview, the Disciplinary Officer shall determine whether to gather additional information or documentation or whether to proceed to an administrative conference or disciplinary hearing.
- 3) In the event the student is unwilling or unavailable to meet with the Disciplinary Officer, the Disciplinary Officer may determine to proceed with the hearing or administrative conference based upon available information.
- 4) For purposes of evaluating whether the student's conduct is a violation of the Student Code of Conduct, no consideration shall be given to a student's actual or perceived disability unless such disability is being asserted by the student as a defense to, or in mitigation of a potential violation.
- 5) Should the Disciplinary Officer gather additional information or interview other witnesses, the interviews must be documented as specified in this procedure.
- 6) The student shall have the right at any point in the process to accept responsibility for their actions and accept the recommended sanction which concludes the disciplinary process.

4. ADMINISTRATIVE CONFERENCE

- a. At a scheduled meeting, the Disciplinary Officer shall:
 - 1) Advise the student of the alleged offense;
 - 2) Make reasonable effort to resolve the matter informally. The student is informed of what he or she is accused of doing and the basis of the accusation;

- 3) Advise the student that he/she shall not have the right to a hearing before a Disciplinary Committee in connection with disciplinary sanctions including reprimand, disciplinary probation, and removal or suspension not exceeding 10 instructional days;
 - 4) Ensure the Administrative Conference includes a third party if the recommended disciplinary action is suspension of less than 10 days;
 - 5) Advise the student of his/her right to a formal hearing for sanctions exceeding ten days which includes the Police 14-day suspension (Penal Code 626.4);
 - 6) Advise the student that he/she may elect to waive the right to a formal hearing and accept the decision of the Disciplinary Officer at any time.
- b. If the student elects to waive the right to a hearing before the Disciplinary Committee and to accept the imposition of a sanction mutually agreed upon by the student and the Disciplinary Officer, any such waiver shall be in writing using the Student Waiver of Right of Disciplinary Hearing form and signed by both parties and a witness.

5. DISCIPLINARY HEARING PREPARATION

- a. The matter shall proceed to a formal hearing if the Disciplinary Officer has determined that the alleged offense is too serious to warrant an informal resolution or if an informal resolution cannot be reached. The Disciplinary Officer shall prepare the case as follows:
 - 1) Notify the student of the charges;
 - 2) Identify and interview witnesses necessary for the presentation of the case;
 - 3) If witnesses are unavailable during the investigation, the Disciplinary Officer should attempt to obtain written statements. Witness statements may only be used for investigation purposes. Witness statements may be used at the hearing only if the witness is present at the hearing and there is an opportunity for both sides to question the witness. Access to witness statements must be made available pursuant to this procedure;
 - 4) Document interviews as identified in this procedure;
 - 5) Obtain relevant written documentation;
 - 6) Access to any tangible evidence presented at the disciplinary hearing shall be made available for review by the student at least 2 working days prior to the hearing.
- b. Other Responsibilities of the Disciplinary Officer:
 - 1) Advise the student of his/her right to representation. The student has the right of self-representation or representation by another party. If the student decides to have a representative, the Disciplinary Officer shall be notified, in writing, by the student who the representative will be no later than two (2) working days prior to the hearing. Should the student elect to be represented by an attorney, the attorney may serve in an advisory capacity only but may not directly participate in the hearing;
 - 2) Advise the student of the requirement of his/her presence at the hearing. The hearing shall proceed in the absence of the student unless a satisfactory explanation has been provided;
 - 3) Assume responsibility for making the necessary arrangements for the hearing. Arrangements shall include scheduling a room, providing for a tape recorder, notifying members of the Disciplinary Committee and witnesses, and providing committee members with copies of these procedures;
 - 4) Prepare and personally deliver or mail written notice to the student not less than five (5) working days prior to the hearing.
 - a) Notice shall specify the time and place of the hearing, a statement of charges against the student, recommended sanction, a list of members of the Disciplinary Committee, the date, time and location that the tangible evidence will be made available for inspection and (when applicable) a

statement of possible financial aid suspension or termination. A copy of these procedures shall also be enclosed.

- b) Notice shall also specify if there is to be an interim suspension from the college pursuant to Education Code Section 66017. In the event of an immediate suspension, the student shall remain suspended until the final disposition of the hearing.
- c) The notice shall be presumed to have been received and read when sent to the last address available in the records of the college and deposited in the United States mail, postage prepaid and return receipt requested.

6. DISCIPLINARY COMMITTEE

- a. Each academic year, the Academic Senate, the Associated Students, and the Classified Union shall nominate a minimum of five faculty members, students and classified staff members to form a pool for a one year term, from which a Disciplinary Committee may be convened. In the event the pool needs to be augmented, appointments may be made by the Academic Senate Associated Students and/or the Classified Union.
- b. An administrator, other than the Disciplinary Officer, shall be designated by the President to serve as the chairperson of the Disciplinary Committee and may vote only in the event of a tie.
- c. The Disciplinary Committee shall be constituted by the Chairperson in accordance with the following criteria:
 - 1) The Disciplinary Committee shall include at least one (1) student selected from the pool submitted by the Associated Students' governing body. In the event students identified in the pool are unavailable to serve, the AS President or designee will select other students as appropriate. Hearings, where the recommended sanction is expulsion, shall include at least two (2) students;
 - 2) The Disciplinary Committee shall include at least one (1) faculty member selected from the pool submitted by the Academic Senate. In the event faculty members identified in the pool are unable to serve, the faculty Senate President or designee will select other faculty as appropriate. Hearings, where the recommended sanction is expulsion, shall include at least two (2) faculty members;
 - 3) The Disciplinary Committee shall include at least one (1) classified staff member selected from the pool submitted by the Classified Union. In the event classified staff members identified in the pool are unable to serve, the Classified Union President or designee will select other classified staff as appropriate. Hearings, where the recommended sanction is expulsion, shall include at least two (2) classified staff members;
 - 4) There shall be an equal number of students, faculty, and staff represented;
 - 5) No person shall serve as a member of the Disciplinary Committee if that person has been personally involved in any matter giving rise to the alleged offense, or could otherwise not act in a neutral manner.
 - a) The student may request the names of the Disciplinary Committee members and may challenge for cause any member of the Disciplinary Committee no later than 72 hours prior to the beginning of the hearing by addressing a challenge to the Vice President who shall determine whether cause for disqualification has been shown.
 - b) If the Vice President determines that sufficient grounds for removal of a Disciplinary Committee member has been presented, the Vice President shall remove the challenged member or members and substitute a member or members from the pool.
 - c) Students and their representative(s) or attorney(s) are prohibited from making any contact with Disciplinary Committee members in advance of the hearing. If either make contact with any interim suspension until after the recommendation of the committee has been acted upon by the College President.

7. DISCIPLINARY HEARING PROCEDURES

- 1) Students shall have the right to a hearing before the Disciplinary Committee as provided in these procedures in connection with restitution, suspension or expulsion exceeding 10 working days. The hearing shall take place prior to the imposition of the disciplinary sanction, except where required in order to protect lives or property and to ensure the maintenance of order, an immediate interim suspension, pending a hearing for possible suspension or expulsion, may be imposed. In the case of an immediate interim suspension, the suspended student shall be afforded the opportunity for a hearing before the Disciplinary Committee within 10 working days of the suspension. In addition, the student's instructors and college police will be notified
- 2) The Chairperson of the Disciplinary Committee shall preside over the hearing and make rulings as to its conduct and shall ensure that the committee's representation is valid. All rulings of the Chairperson shall be final unless there is a two-thirds vote of the members of the Disciplinary Committee to the contrary. The hearing shall be closed and confidential. A taped recording maintained by the chairperson, shall be the only taped recording maintained. Destruction of the records (tapes) shall be in accordance with Procedure 2300.1.
- 3) Proceedings - Formal rules of process, procedure and/or technical rules of evidence as applied in a civil or criminal court are not used in student discipline proceedings.
- 4) Disciplinary Committee - To be a valid hearing, at least three (3) members of the Disciplinary Committee, plus the Chairperson must be present. At least six (6) members of the Disciplinary Committee plus the Chairperson must be present for expulsion hearings.
- 5) Absence of the student - The hearing shall proceed in the absence of the student unless a satisfactory explanation for the absence has been provided. The Chairperson shall decide whether to proceed in the absence of the student after considering the explanation for the absence. If the student leaves the hearing before its conclusion, the hearing shall proceed.
- 6) Opening - The Chairperson shall preside and call the hearing to order, introduce the participants, and announce the purpose of the hearing, as follows: "this committee meets pursuant to BP 5095 to hear charges against (student's name) and to make findings of fact and recommendations for action to the President."
- 7) Notice of Charges - The Chairperson shall distribute copies of the written notice to the members of the Disciplinary Committee, and shall read aloud and affirm that the student has received a copy of the charges in accordance with this procedure. In the event that the student did not receive proper written notice of the charges, the Disciplinary Committee shall decide whether or not to proceed with the hearing. If the hearing must be rescheduled, it shall be within five (5) working days.
- 8) Plea - The student shall admit or deny each charge. If the student admits each charge, and wishes to present no evidence of mitigating circumstances or other defense, the Disciplinary Committee shall retire to make its decision. If the student denies any or all of the charges, or wishes to present evidence of mitigating circumstances, the hearing shall proceed.
- 9) Opening Statement - First, the Disciplinary Officer, and then the student, shall have the opportunity to present an opening statement.
- 10) Burden of Proof - The Disciplinary Officer has the burden of proving that each charge is true. A preponderance of evidence must be established by the Disciplinary Officer. The Disciplinary Officer will present relevant evidence and may call a witness(s) in support of the charges first. Then, the student may present evidence to refute the Disciplinary Officer's evidence.
 - a) For purposes of evaluating whether the student's conduct is a violation of the student code of conduct, no consideration shall be given to a student's actual or perceived disability unless such disability is being asserted by the student as a defense to, or in mitigation of a potential violation.

- 11) Evidence - All relevant evidence is admissible, including but not limited to testimony of witnesses, physical objects, police reports, photographs, and copies of documents. Formal rules of evidence shall not apply. The chairperson shall rule on the relevance of all evidence.
- 12) Witnesses - The Disciplinary Officer and the student shall be entitled to call witnesses and to question witnesses presented by the other. A member of the Disciplinary Committee may ask questions of witnesses at any time upon recognition by the Chairperson. Either side may recall a witness, who again, may be questioned by both parties and the Disciplinary Committee.
 - a) Witnesses shall not be present at the hearing when not testifying unless all parties and the Disciplinary Committee agree to the contrary.
 - b) The Chairperson will swear in each witness as follows: "I (state your name) swear to tell the truth, the whole truth and nothing but the truth."
- 13) Closing Arguments - First the Disciplinary Officer, and then the student, shall be afforded the opportunity to make a closing argument.
- 14) Committee Deliberation - The Disciplinary Committee shall deliberate in closed session, with only the members of the Disciplinary Committee present. The deliberations shall not be tape recorded. The Disciplinary Committee shall reach its decision based only upon the evidence presented and shall not consider matters outside of the record. The Committee shall determine the validity of each charge by majority vote. The Committee shall recommend disciplinary sanctions based upon its findings.

8. DISCIPLINARY COMMITTEE FINDINGS AND RECOMMENDED SANCTIONS

Within five (5) working days after the hearing, the Chairperson shall deliver to the President a written report that provides specific findings of fact as to each charge, and recommended sanctions. A minority opinion may be recorded as part of the report.

9. PRESIDENT'S DECISION

- 1) The President shall review the findings and recommended sanctions based upon the record of the hearing. Matters outside of that record shall not be considered. If the President does not accept the sanctions recommended by the Disciplinary Committee, the reason shall be stated in writing. If the President decides to impose a sanction not recommended by the Disciplinary Committee, the reasons shall be stated in writing.
- 2) The President shall prepare the final written report of findings and sanctions within five (5) working days following receipt of the Disciplinary Committee's report. A copy shall be sent to the Disciplinary Officer, the Chairperson and to the student by registered mail. If the student is a minor, the report shall be sent to the parent or guardian.
- 3) When the decision is to expel a student, the President shall recommend expulsion to the Governing Board. Only the Board of Trustees shall be authorized to expel a student (Education Code Section 76030). The President may suspend the student pending expulsion action by the Board. The final decision of the Governing Board shall be disseminated to the Presidents and a hold placed on the student's record by the Vice President of Student Services.
- 4) When the decision is to suspend a student, the student shall be suspended from all colleges, campuses, sites, programs and activities of the district. The President shall notify the Chancellor, and college Presidents of any decision to suspend a student. The Vice President of Student Services at the colleges shall place an administrative hold on the student's record as follows: Policy 3100 Violation Contact the Vice President of Student Services, (college name).
- 5) When the final decision is to suspend or terminate Financial Aid, the Disciplinary Officer will notify the College Financial Aid Office. The Financial Aid Office will make all decisions regarding suspension or termination of Financial Aid.
- 6) Once the President makes a decision, the disciplinary process has been completed. Expulsion proceedings will be completed upon action by the Board of Trustees.

- 7) Findings of the discipline hearing are confidential.
- 8) In event of sexual assault, the alleged victim of the sexual assault shall be informed within three days of the results of any disciplinary action.

10. APPEAL PROCESS

- 1) A student may appeal the President's decision to the Chancellor within 15 days of the date the student received the President's decision. Within 15 days of receipt of notification from the student, the Chancellor will review the appeal.
 - a) All deliberations must occur in closed session to protect the student's right to privacy.
 - b) The student must be notified in writing by mail, or certified mail, of the intent of the action.
- 2) When the student has exhausted rights to appeal, the student may appeal to an appropriate court of law. Students shall be notified of their obligation to exhaust the District's hearing and appeal process prior to filing a legal action.

11. RECORDS MAINTENANCE

Upon closure of a disciplinary investigation, conference or hearing, all student disciplinary records shall be maintained in an office designated by the Vice President of Student Services at each college in accordance with the Records Retention requirements of the California Education Code.

12. DISCIPLINARY SANCTIONS

- a. Rights and responsibilities of students are not fundamentally different from those of other members of society. District officials administer the academic community under statutory authority in accordance with the directions of the Board. Discipline is administered outside civil authority or concurrent with civil authority in matters which affect the academic community. Examples of disciplinary sanctions may include, but are not limited to:
 - 1) Admonition - An oral statement to a student that he/she is violating or has violated the Student Code of Conduct;
 - 2) Reprimand - A written notice by the Disciplinary Officer of violation of the Student Code of Conduct. A reprimand may include the possibility of more severe disciplinary sanctions in the event of future infractions of the Student Code of Conduct;
 - 3) Community service or other educational sanctions;
 - 4) Disciplinary Probation - Formal written notice by the Disciplinary Officer of violation of the Student Code of Conduct which may include exclusion from participation in specified privileges for a period of time not exceeding one (1) calendar year, including conditions that must be met while on probation. Further violation of the Student Code of Conduct will result in more severe sanctions
 - 5) Restitution - Formal action by the Disciplinary Officer to require reimbursement for damage to or misappropriation of property. This may take the form of appropriate service or other compensation;
 - 6) Removal from classes/facility - Exclusion of a student by an instructor or administrator from a class and/or facility for the day of an offense and/or the next class meeting. An instructor removing a student from class shall make written report using Removal of Disruptive Students Faculty/Staff Incident Form. After-the-fact review by the President/designee shall be effective if the student alleges in writing that an instructor has abused his/her administrative discretion. In accordance with, 5040.3013, *College Class Attendance*, absences pursuant to this definition shall be counted as excused and make-up assignments shall be at the discretion of the instructor;
 - 7) Suspension - Action by the President to exclude from all colleges, campuses, sites, programs and activities in the district for a definite period of time. This action shall be posted on the permanent record, but shall not be reflected on the academic transcript. This does not prohibit, where an immediate suspension is required in order to protect lives or property and to insure the maintenance of order, interim suspension pending a hearing, provided that a reasonable opportunity be afforded the suspended person for a hearing within ten (10) days;

- 8) Expulsion - Action by the Board of Trustees to terminate student status in the district indefinitely. The Board may expel a student for good cause when other means of correction fail to bring about proper conduct or when the presence of the student causes a continuing danger to the physical safety of the student or others;
 - a) The Board of Trustees shall accept or reject the panel's findings of fact and recommendations after careful review of the record.
 - b) The decision of the Board of Trustees must be supported by substantial evidence.
 - c) Final action shall be taken by the Board of Trustees at a public meeting. Action to expel a student will be posted on the academic record and transcript.

13. DEFENITIONS

- a) **College:** San Jose City College and its respective programs
- b) **District:** San Jose Evergreen Community College District
- c) **President:** The college president or a designated representative of the college president
- d) **Student:** Any person currently enrolled as a student at San Jose City College
- e) **Instructor:** Any academic employee of the District in whose class a student subject to discipline is enrolled, or counselor who is providing or has provided services to the student, or other academic employee who has responsibility for the student's educational program.
- f) **Student Discipline Officer:** The official designated by the College President to be responsible for reviewing student discipline matters
- g) **Written Warning:** Written notice to the student that continuation or repetition of specific conduct found wrongful within a period of time stated in the warning, may be cause for more severe disciplinary action. Written reprimands may become part of a student's permanent record at the college.
- h) **Suspension:** Exclusion of the student for good cause from one or more classes for a period of up to ten (10) days of instruction, or the remainder of the school term, or from all classes and activities for one or more terms. The suspended student is prohibited from being enrolled in any other College in the District for the period of suspension.
- i) **Withdrawal of Consent to remain on campus:** Withdrawal of consent by the student discipline officer for any person to remain on campus in accordance with California Penal Code Section 626.4 where the student discipline officer has reasonable cause to believe that such person has willfully disrupted the orderly operation of the campus.
- j) **Working Day:** Days during which the district is in session and regular classes are being held, excluding Saturdays and Sundays
- k) **Advocate:** a person who speaks or writes in support or defense of a person, cause, etc. The advocate can be any certificated employee of the college to support the student.