



# SAN DIEGO COMMUNITY COLLEGE DISTRICT

## Administrative Procedure

### Chapter 5 – Student Services

#### AP 3100.2 - STUDENT DISCIPLINARY PROCEDURES

**DRAFT**

#### 1. PURPOSE

These procedures are designed to provide uniform standards to assure due process when a student is charged with a violation of San Diego Community College District Student Code of Conduct as defined in Board of Trustees *Policy BP 3100, Student Rights, Responsibilities, and Administrative Due Process*. 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) In cases of sexual assault or sexual violence, the Title IX coordinator shall serve as the campus point of contact for all parties.

3) 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 the student is receiving services through the DSPS office; if there is an accommodation that could mitigate the behavior; or if a referral for professional services is appropriate.

4) The Disciplinary Officer will not be an individual who has a conflict of interest or bias for or against the accuser or the accused.

5) In cases of sexual assault or sexual violence or assault, both the accuser and the accused will be notified simultaneously in writing of the results of any disciplinary proceeding.

#### 3. FACT FINDING INVESTIGATION

a. Within twenty-five (25) instructional days from the time the Disciplinary Officer is informed of allegations which may constitute a violation of the Student Code of Conduct, the Officer shall conduct a fact finding investigation 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:
  - a) Date of interview:
  - b) Description of incident:
  - c) Name of witnesses:
  - d) Location of incident:
  - e) 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 told 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 10 days;
  - 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 two (2) instructional days prior to the hearing.

7) In cases involving sexual assault or sexual violence, provide written notice to the victim and accused that, to the degree legally possible, the district will maintain the confidentiality of student records at all times.

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, except that the student shall not be represented by an attorney. 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) instructional days prior to the hearing. In cases of sexual assault or sexual violence, both

the accused and the victim shall have the right to be accompanied by an advisor/representative of their choice. Representatives may not participate in the hearing, nor use any electronic devices during 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) In cases involving sexual assault or sexual violence, the victim shall be afforded the opportunity to participate in the hearing from a different location so as to not be in the same room with the accused;
- 4) 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;
- 5) Prepare and personally deliver or mail written notice to the student not less than five (5) instructional 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 shall nominate a minimum of eight (8) faculty members and the Associated Students organization shall nominate eight (8) students 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 and/or Associated Students.

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.

- b. 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' Organization governing body. In the event students identified in the pool are unavailable to serve, the President or designee will select other students as appropriate. Hearings, where the recommended sanction is expulsion, or for cases involving sexual assault or sexual violence shall include at least two (2) students;
- 2) The Disciplinary Committee shall include at least one (1) instructor selected from the pool submitted by the Academic Senate. In the event faculty 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, or for cases involving sexual assault or sexual violence shall include at least two (2) instructors;
- 3) There shall be an equal number of students and faculty represented;
- 4) 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. 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 President who shall determine whether cause for disqualification has been shown. If the President determines that sufficient grounds for removal of a member of the Disciplinary Committee has been presented, the President shall remove the challenged member or members and substitute a member or members from the pool. Students are prohibited from making any contact with Disciplinary Committee members in advance of the hearing.

## 7. DISCIPLINARY HEARING PROCEDURES

- a. 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 instructional 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 instructional days of the suspension. In addition, the student's instructors and college police will be notified.
- b. 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 Administrative Procedure *AP 6550.2, Storage and Disposition of Records.*

- c. 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.
- d. Disciplinary Committee - To be a valid hearing, at least two (2) members of the Disciplinary Committee, plus the Chairperson must be present. At least four (4) members of the Disciplinary Committee plus the Chairperson must be present for expulsion hearings.
- e. 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.
- f. 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 Administrative Procedure 3100.2 to hear charges against (student's name) and to make findings of fact and recommendations for action to the President."
- g. Notice of Charges - The Chairperson shall distribute copies of the written notice to the members of the Disciplinary Committee. The Chairperson 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) instructional days.
- h. 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.
- i. Opening Statement - First, the Disciplinary Officer, and then the student, shall have the opportunity to present an opening statement.
- j. Burden of Proof - The Disciplinary Officer has the burden of proving that each charge is true. A preponderance of evidence **more likely than not** must be established by the Disciplinary Officer. The Disciplinary Officer will present relevant evidence and may call a witness in support of the charges first. Then, the student may present evidence to refute the Disciplinary Officer's evidence.

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.

k. 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.

l. 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. Witnesses shall not be present at the hearing when not testifying unless all parties and the Disciplinary Committee agree to the contrary. In cases involving sexual assault or sexual violence, the victim has the right to not be questioned directly by the accused. The college will make the necessary accommodations.

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."

m. Closing Arguments - First the Disciplinary Officer, and then the student, shall be afforded the opportunity to make a closing argument.

n. 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 standard of evidence that shall be used is preponderance of evidence (more likely than not). 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) instructional 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. DISCIPLINARY CASES INVOLVING PROTECTIVE ORDERS

In cases where the severity of the student's action warrants that the district obtain a protective order from the court that prevents the student from attending classes, the student must apply for readmission under the provision of Administrative Procedure 3000.2.

## 10. PRESIDENT'S DECISION

a. 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.

- b. 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. In cases involving sexual assault or sexual violence, both the accused and the victim shall be notified simultaneously of the outcome of the disciplinary hearing including that there is no appeal. The President shall notify the accused and the Title IX coordinator shall notify the accuser. In addition, both shall be notified that there is no appeal.
- c. 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 Chancellor, Student Services.
- d. 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, Vice Chancellor, Student Services, and college Presidents of any decision to suspend a student. The Vice President, Student Services at the colleges and Continuing Education shall place an administrative hold on the student's record as follows: Policy 3100 Violation Contact the Vice President, Student Services, college name.
- e. When the final decision is to suspend or terminate financial aid, the Disciplinary Officer will notify the College Financial Aid Appeals Committee. The College Financial Aid Appeals Committee will make all decisions regarding suspension or termination of financial aid.
- f. Once the President makes a decision, the disciplinary process has been completed. There is no appeal. Expulsion proceedings will be completed upon action by the Board of Trustees.
- g. Findings of the discipline hearing are confidential.
- ~~h. In event of sexual assault, the alleged victim of the sexual assault shall be informed within three (3) days of the results of any disciplinary 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, Student Services at each college and Continuing Education headquarters in accordance with the Records Retention requirements of the California Education Code.

## 12. DISCIPLINARY SANCTIONS

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 **for all incidents of misconduct** 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 Class - Exclusion of a student by an instructor from a class for the day of an offense and/or the next class meeting. An instructor removing a student from class shall make a written report using the *Faculty Removal of Disruptive Student from Class* 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 Administrative Procedure *AP 3110.1, 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;

The Board of Trustees shall accept or reject the panel's findings of fact and **President's** recommendations after careful review of the record.

The decision of the Board of Trustees must be supported by substantial evidence.

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.

Approved by  
the Chancellor: ~~November 15, 2013~~

Supersedes: Procedure 3100.2 - 4/26/84, 6/16/86, 5/3/00, 10/14/10  
Policy 3100.3 - 5/10/79, 4/29/84 (Policy 3100.3 merged with  
Procedure 3100.2), **11/15/13**