

## Student Due Process and Discipline

AP 5520

In developing responsible student conduct, disciplinary proceedings play a role substantially secondary to example, counseling, guidance, and admonition. At the same time, educational institutions have a duty and the corollary disciplinary powers to protect their educational purpose through the settings of standards of scholarship and conduct for the students who attend them and through the regulation of the use of institutional facilities.

The purpose of this procedure is to provide a prompt and equitable means to address violations of the Student Code of Conduct (as set forth in Administrative Procedure AP 5510), which guarantees to the student or students involved the due process rights entitled to them by state and federal constitution protections. This procedure will be used in a fair and equitable manner, and not for the purpose of retaliation. It is not intended to substitute for criminal or civil proceeds that may be initiated by other agencies.

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### **I. DEFINITIONS**

**College.** Foothill College, De Anza College and their respective programs and campuses.

**District.** The Foothill-De Anza Community College District.

**President.** The college president or a designated representative of the college president.

**Student.** A currently enrolled student, a person who has filed an application for admission to the college, or a former student, ... who was also enrolled at the time of the alleged violation of the Standards of Student Conduct.

Deleted: Any person currently enrolled as a student at any College or in any program offered by the District.

**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.

**Student Discipline Officer.** The student judicial affairs official designated by the College to be responsible for reviewing and processing student discipline matters.

**Admonition.** An administrative, verbal warning to the student to cease and desist from conduct determined to violate the Standards of Student Conduct.

**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.

**Disciplinary Probation.** Exclusion from participation in privileges or extracurricular activities in any format or location as set forth in the notice of disciplinary probation for a specified period of time.

**Restitution.** Financial liability for damage to or misappropriation of district or personal property or funds. Restitution may take the form of repayment of funds or appropriate service to repair or otherwise compensate for damages.

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**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. No student shall be subject to suspension without the opportunity to participate in a due process hearing or meeting within a reasonable amount of time.

**Summary Suspension.** Any student who has willfully disrupted the orderly operation of the campus may be promptly suspended pending a hearing, where such immediate suspension is required in order to protect lives or property and to ensure the maintenance of order, provided, however, that a reasonable opportunity must be afforded the suspended person for a hearing within ten (10) days. In all other cases, where disciplinary action is to be taken in response to willful disruption of the orderly operation of the campus, discipline shall be imposed only after a prompt hearing by a campus body resulting in a finding that the student willfully disrupted the orderly operation of the campus.

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**Expulsion.** Exclusion of the student by action of the Board of Trustees from all Colleges in the District permanently.

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**Removal from class.** Exclusion of the student by an instructor for the day of the removal and the next class meeting.

**Withdrawal of Consent to Remain on Campus.** Withdrawal of consent by district police or 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.

**Day.** Days during which the District is in session and regular classes are held, excluding Saturdays, Sundays and holidays.

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## **II. DISCIPLINARY PROCEDURES**

Except in cases where immediate discipline pending a hearing is authorized, the following procedures will apply before disciplinary action is taken to suspend or expel a student:

**Notice:** The Student Discipline Officer will determine if there are sufficient grounds to warrant discipline. If the Student Discipline Officer determines sufficient grounds exist to warrant discipline, the student will be provided with written notice of that determination. The written notice will include the following:

1. The specific section of the Code of Student Conduct that the student is charged with violating.

2. A short statement of the facts supporting the allegations against the student.

3. The right of the student to meet with the Student Discipline Officer or designee to discuss the accusation, or to respond in writing.

4. The nature of the discipline that is being considered.

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**Time Limits.** The notice must be provided to the student within ten (10) days of the date on which the conduct took place or became known to the Student Discipline Officer. In the case of continuous, repeated or ongoing conduct, the notice must be provided within ten (10) days of the date on which conduct occurred or became known to the Student Discipline Officer which led to the decision to take disciplinary action. Any times specified in these procedures may be shortened or lengthened if there is mutual concurrence by all parties.

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**Pre-Hearing Meeting.** If the student chooses to meet with the Student Discipline Officer, the meeting must occur no sooner than five (5) days after the notice is provided. The request must be made in writing to the Student Discipline Officer or designee. At the meeting, the student must again be told the facts leading to the accusation, must be given an opportunity to respond verbally or in writing to the accusation, and be provided with their options for doing so. In addition, the Student Discipline officer shall explain the hearing procedures to the student and provide the opportunity to ask questions and receive clarification about the conduct of the hearing.

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**Schedule of Hearing.** The formal hearing shall be scheduled within ten (10) days after the prehearing meeting with the Student Discipline Officer.

**Campus Disciplinary Hearing Board.** The Campus Disciplinary Hearing Board shall be comprised of members of the faculty, classified staff, and administrators. The Student Discipline Officer and the president of the Academic Senate and Classified Senates shall each, at the beginning of the academic year, establish a list of persons who will serve on student disciplinary hearing panels. The Student Discipline Officer shall appoint the hearing panel from the names on these lists. The administrator on the hearing panel shall serve as Chair of the hearing board. However, no administrator or faculty member who has any personal involvement in the matter to be decided, who is a necessary witness, or who could not otherwise act in a neutral manner shall serve on a hearing panel.

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**Hearing Board Chair.** The administrator appointed to serve as chair shall make the final decision on all matters relating to the conduct of the hearing unless there is a vote by other members of the board to the contrary.

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**Conduct of The Hearing:**

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The members of the hearing panel shall be provided with a copy of the accusation against the student and any written response provided by the student before the hearing begins. The Student Discipline Officer shall present the facts supporting the accusation.

The Student Discipline Officer and the student may call witnesses and introduce oral and written testimony relevant to the issues of the matter. In compliance with principles of due process, the student shall have the right to present cross-examination questions for the witnesses to the hearing board chair. The hearing board chair will determine the relevancy and appropriateness of the questions before asking them. The hearing board chair will pose the questions to the witnesses, who will be compelled to provide a response to each question presented. Formal rules of evidence shall not apply. Any relevant evidence shall be admitted. Unless the hearing panel determines to proceed otherwise, the Student Discipline Officer and the student shall each be permitted to make an opening statement. Thereafter, the Student Discipline Officer shall make the first presentation, followed by the student. The Student Discipline Officer may present rebuttal evidence after the student completes their evidence. The burden shall be on the Student Discipline Officer to prove by the preponderance of the evidence that the allegations against the student are true.

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The student may represent themselves, and may also have the right to be represented by a person of their choice. An attorney shall not represent the student unless, in the judgment of the hearing panel, complex legal issues are involved. If the student wishes to be represented by an attorney, a request must be presented not less than five (5) days prior to the date of the hearing. If the student is permitted to be represented by an attorney, the Student Discipline Officer may request legal assistance. The hearing panel may also request legal assistance; any legal advisor provided to the panel 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.

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Hearings shall be closed and confidential unless the student requests that it be open to the public.

Any such request must be made no less than five (5) 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 panel agree to the contrary.

The District shall record the hearing either by electronic recording or video recording, 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 electronic recording, the hearing panel chair shall, at the beginning of the hearing, ask people present to identify themselves by name, and thereafter shall ask witnesses to identify themselves by name. In the event the hearing is held via teleconferencing, all parties must be visible throughout the hearing unless there are technical difficulties preventing them from doing so. The recording shall remain in the custody of the District at all times, unless released to a professional transcribing service. The student may request a copy of the recording.

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All testimony shall be taken under oath; the hearing panel chair shall administer the oath. 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 video or electronically recorded is not considered "unavailable." Within ten (10) days following the close of the hearing, the hearing panel shall prepare and forward to the Student Discipline Officer a written recommendation. The recommendation shall include specific factual findings regarding the allegations, and shall

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include specific conclusions regarding whether any specific sections of the Standards of Student Conduct were violated. The decision shall also include a specific recommendation regarding the disciplinary action to be imposed, if any. The decision shall be based only on the record of the hearing, and not on matter outside of that record. The record consists of the original accusation, the written response, if any, of the student, and the oral and written evidence produced at the hearing. The Student Discipline Officer will forward the recommendation to the President.

**Students facing disciplinary action are subject to any of the following actions:**

A. Written or verbal reprimand. An admonition to the student to cease and desist from conduct determined to violate the Code of Student Conduct. Written reprimands may become part of a student's permanent record at the college. A record of the fact that a verbal reprimand has been given may become part of a student's record at the college for a period of up to one year.

B. Probation. A period of time specified for observing and evaluating a student's conduct, with or without special conditions. Probation will be imposed for a specific period of time; the student is considered removed from probation when the period expires. Violation of any conditions during the period of probation may be cause for further disciplinary action.

C. Loss of Privileges and Exclusion from Activities. Exclusion from participation in designated privileges and extracurricular activities for a specified period of time. Violation of any conditions or Code of Student Conduct during the period of sanction may be cause for further disciplinary action.

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D. Educational Sanction. Work, research projects, educational assignments, counseling, or community service projects may be assigned. Violation of any requirements of assignment or Code of Student Conduct during the period of sanction may be cause for further disciplinary action.

E. Treatment Requirement. Require enrollment in anger management, drug and alcohol rehabilitation treatment.

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F. Group Sanction. Sanctions for the misconduct of groups or organizations may include temporary or permanent revocation or denial of group registration as well as other appropriate sanctions.

G. Removal from Class. Exclusion of the student by an instructor for the day of the removal and the next class meeting. Instructor must immediately report the removal to the appropriate Dean and/or Vice President (or designee).

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H. Exclusion from areas of the College. Exclusion of a student from specified areas of the campus. Violation of the conditions of exclusion or Code of Student Conduct during the period of exclusion may be cause for further disciplinary action.

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I. Withdrawal of Consent to Remain on Campus. Withdrawal of consent by the Campus Police or the Student Discipline Officer for any person to remain on campus in accordance with California Penal Code Section 626.4/626.6 where the Campus Police has reasonable cause to believe that such person has willfully disrupted the orderly operation of the campus. Any person

as to whom consent to remain on campus has been withdrawn who knowingly reenters the campus during the period in which consent has been withdrawn, except to come for a meeting or hearing, is subject to arrest.

J. Individualized Assessment. This assessment will be conducted by an appropriately trained professional to determine whether there is a high probability that a student poses a *direct threat* to the health and safety of the campus community and/or specific individual(s) affiliated with the campus.

K. Short-term Suspension. Exclusion of the student by the President (or designee) for good cause from one or more classes for a period of up to ten consecutive days of instruction.

L. Long-term Suspension. Exclusion of the student by the President (or designee) for good cause from one or more classes for the remainder of the school term or school year, or from all classes and activities of the college and District for one or more terms.

M. Expulsion. Permanent exclusion of the student by the Board of Trustees from attending all colleges in the District.

### President's Decision.

Suspension. Within ten (10) days following receipt of the hearing panel's recommended decision, the President shall render a written decision. The President may accept, modify or reject the findings, decisions and recommendations of the hearing panel. If the President modifies or rejects the hearing panel's decision, the President shall review the record of the hearing, and shall prepare a new written decision that contains specific factual findings and conclusions. Written notice of the President's decision shall include the right of the student to request an appeal of the decision within thirty (30) days of the date of the decision letter. The President (or designee) will review the record of the hearing, the appeal and any additional information provided by the student, and render a decision on the appeal within ten (10) days. The decision of the President shall be final. The President shall notify the Chancellor of the District of the decision to suspend a student.

- 1) Student must submit their appeal 30 days of the date of the decision letter.
- 2) Student can send their appeal by email, mail, or drop off to the President's Office (appeal must be received within the 30 days).
- 3) Student must provide a Rational statement and relevant information.

Expulsion. Within ten (10) days following receipt of the hearing panel's recommended decision, the President shall render a written recommended decision to the Board of Trustees. The President may accept, modify or reject the findings, decisions and recommendations of the hearing panel. If the President modifies or rejects the hearing panel's decision, they shall review the record of the hearing, and shall prepare a new written decision that contains specific factual findings and conclusions. The President's recommendation shall be forwarded to the Board of Trustees. Written notice of the final decision shall be provided to the student. The notice will include the right of the student to request a formal hearing before expulsion is imposed, and a copy of AP 5520 Student Discipline Procedures describing the procedures for a hearing.

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Appeal Process. <sup>¶</sup>  
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Student must provide a Rational statement and relevant information.<sup>¶</sup>

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**Board of Trustee’s Decision.** Once received, the President’s recommendation will be placed on the agenda of the next regularly scheduled Board meeting. The Board of Trustees shall determine whether to expel a student for cause following hearing before the Board. The Board shall consider an expulsion recommendation in closed session, unless the student has requested that the matter be considered in a public meeting in accordance with these procedures. (Education Code Section 72122)

The student shall be notified in writing, by registered or certified mail to the address last on file with the District, or by personal service, at least three (3) days prior to the meeting, of the date, time, and place of the Board's meeting.

The student may, within forty-eight (48) hours after receipt of the notice, request that the hearing be held as a public meeting.

Even if a student has requested that the Board consider an expulsion recommendation in a public meeting, the Board will hold any discussion that might be in conflict with the right to privacy of any student other than the student requesting the public meeting in closed session. The Board may accept, modify or reject the findings, decisions and recommendations of the President and/or the hearing panel. If the Board modifies or rejects the decision, the Board shall review the record of the hearing, and shall prepare a new written decision that contains specific factual findings and conclusions. The decision of the Board shall be final. The final action of the Board on the expulsion shall be taken at a public meeting, and the result of the action shall be a public record of the District.

**Immediate Summary Suspension (Education Code Section 66017).** The President may order immediate interim suspension pending a hearing of a student where he/she/they concludes that immediate suspension is required to protect lives or property and to ensure the maintenance of order, provided that a reasonable opportunity be afforded the suspended person for a hearing within 10 days. In cases where an interim suspension has been ordered, the time limits contained in these procedures shall not apply, and all hearing rights, including the right to a formal hearing where a long-term suspension or expulsion is recommended, will be afforded to the student within ten (10) days.

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**Removal from Class (Education Code Section 76032).** Any instructor may order a student removed from his/her/their class for the day of the removal and the next class meeting. The instructor shall immediately report the removal to the Division Dean/Vice President and he Student Discipline Officer. The division dean shall arrange for a conference between the student and the instructor regarding the removal. If the instructor or the student requests, the division dean shall attend the conference. The student shall not be returned to the class during the period of the removal without the concurrence of the instructor. Nothing herein will prevent the Student Discipline Officer from recommending further disciplinary procedures in accordance with these procedures based on the facts that led to the removal.

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**Withdrawal of Consent to Remain on Campus.** The Student Discipline Officer may notify any person for whom there is a reasonable belief that the person has willfully disrupted the orderly operation of the campus that consent to remain on campus has been withdrawn. If the

person is on campus at the time, he or she must promptly leave or be escorted off campus. If the Student Discipline Officer withdraws consent, a written report must be promptly made to the President and the Campus Police.

The person from whom consent has been withdrawn may submit a written request for a hearing on the withdrawal within the period of the withdrawal. The request shall be granted not later than seven, (7) days from the date of receipt of the request. The hearing will be conducted in accordance with the provisions of this procedure relating to interim suspensions.

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In no case shall consent be withdrawn for longer than ten (10) days from the date upon which consent was initially withdrawn.

Any person as to whom consent to remain on campus has been withdrawn who knowingly reenters the campus during the period in which consent has been withdrawn, except to come for a meeting or hearing, is subject to arrest. (Penal Code Section 626.4)

**No Disciplinary Action against Complainants or Witnesses in Sexual Assault Investigations.**  
An individual who participates as a Complainant or witness in an investigation of sexual assault, domestic violence, dating violence, or stalking will not be subject to disciplinary sanctions for a violation of the District's student conduct policy at or near the time of the incident, unless the District determines that the violation was egregious, including, but not limited to, an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic dishonesty.

See Board Policy 5500—Student Rights and Responsibilities

See Administrative Procedure 5510—Student Code of Conduct

*Effective 1/20/06*

*Revised and reviewed by Chancellor's Advisory Council 11/3/06*