

## Student Grievances

AP 5530

### **I. PURPOSE:**

The purpose of this procedure is to provide a prompt and equitable means of resolving student grievances. This procedure is for student grievances only. Faculty and staff with complaints regarding students should refer to *Administrative Procedure 5510 (Student Code of Conduct)* and *5520 (Student Due Process and Discipline)*. This procedure 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 grievances regarding:

1. *Course grades*, to 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.”
2. *Act or threat of intimidation or harassment*. These procedures do not apply to sexual harassment or illegal discrimination. Sexual harassment or complaints on the basis of race, color, national or ethnic origin, age, gender, sexual orientation, marital status, or physical or mental disability should be directed to the Dean of Student Affairs and Activities at Foothill College, the Dean of Student Development and EOPS at De Anza College or the Foothill-De Anza Community College District Human Resources office.
3. *Act or threat of physical aggression*.
4. *Arbitrary action or imposition of sanctions* without proper regard to academic due process specified in the College procedures, unrelated to disciplinary actions.
5. *The exercise of rights of free expression* protected by state and federal constitutions and Education Code Section 76120.

### ***This procedure does not apply to:***

1. *Student disciplinary actions*, which are covered under separate Board policies and Administrative Procedures (*See Administrative Procedure 5520, Student Due Process & Discipline*).
2. *Police citations* (i.e. “tickets”); complaints about citations must be directed to the Santa Clara County Courthouse in the same way as any traffic violation.

3. *Sexual harassment.* Complaints of sexual harassment should be directed to the Dean of Student Affairs and Activities at Foothill College or the Dean of Student Development and EOPS at De Anza College.
4. *Illegal discrimination.* Complaints of discrimination on the basis of race, color, national or ethnic origin, age, gender, sexual orientation, marital status, or physical or mental disability filed against an employee of the District should be directed to the Dean of Student Affairs and Activities at Foothill College or the Dean of Student Development and EOPS at De Anza College.
5. *Residence Determination.* Student should contact the Director of Admissions and Records at De Anza College or the Associate Registrar at Foothill College.
6. *Dismissal from College for Academic Reasons.* Student should consult a counselor. If there are extenuating circumstances, the student may appeal the dismissal to the Academic Council after consulting a counselor.

## **II. DEFINITIONS:**

**Grievant.** A student alleging that a college decision or action has adversely affected his or her status, rights or privileges as a student, or alleges that another student has violated the student's rights.

**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 Grievance Hearing Committee or the College Grievance Officer.

**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. A grievance by an applicant shall be limited to a complaint regarding denial of admission.

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

**Work Day.** A work day shall mean days during which the District is in session and regular classes are held, excluding Saturdays and Sundays. All time deadlines shall be measured by work day, unless otherwise specified as calendar days.

## **III. INFORMAL RESOLUTION OF GRIEVANCES:**

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, that person's immediate supervisor, or the vice president over that division.

The President has appointed an employee who shall assist students in seeking resolution by informal means. This person shall be called the Grievance Officer.

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 thirty (30) calendar days of the incident on which the grievance is based, or thirty (30) calendar days after the student could have reasonably discovered the basis for the grievance, whichever is later. The Statement of Grievance must be filed within the above time frame whether or not the student has already initiated efforts at informal resolution, if the student wishes the grievance to become official. Within two (2) work 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) work 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.

***Steps in the Informal Process Involving College Employees:***

**Step 1:** The student shall confer with the faculty member, administrator or classified staff person directly involved in the facts giving rise to the grievance.

**Step 2:** If unresolved after Step 1, the student shall confer with the faculty member's division dean, or the supervisor of the administrator or classified person.

**Step 3:** If unresolved after Step 2, the student shall confer with the vice president of that dean's or supervisor's division.

**Step 4:** Within the thirty (30) calendar day time limit as outlined above, if the student does not feel that the matter can be resolved after completing Steps 1 2 and 3, an official Statement of Grievance may be filed with the Grievance Officer. The Grievance Officer will advise the student of his/her rights and assist the student, if necessary, in the final preparation of the Statement of Grievance form.

**Step 5:** If after ten (10) work days from the first meeting with the Grievance Officer there is no informal resolution, student may request a grievance hearing.

If the complaint involves a grievance against another student, the grievant shall confer directly with the Grievance Officer, who will advise the grievant of his/her rights and assist the grievant in preparing a Statement of Grievance form.

#### **IV. FORMAL GRIEVANCE PROCESS:**

##### **A. Grievance Hearing Committee.**

The President or his/her Designee shall at the beginning of each semester, including any summer session, establish a standing panel of members of the college community, including faculty members and administrators, from which one or more Grievance Hearing Committees may be appointed. The panel will be established with the advice and assistance of the Academic Senate, who shall submit names to the President or his/her designee for inclusion on the panel. A Grievance Hearing Committee shall include three (3) members from the panel described above. The Administrator on the hearing panel shall serve as chair.

No person shall serve as a member of a Grievance Hearing Committee 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.

The Grievance Officer shall sit with the Grievance Hearing Committee 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 adversary role.

##### **B. Request for Grievance Hearing.**

Any request for a grievance hearing shall be filed on a Request for a Grievance Hearing form in writing within thirty (30) calendar days after discovery of the grievable action and after following steps 1-3 of the informal process above.

Within ten (10) work days following receipt of the Request for Grievance Hearing, the Grievance Officer shall convene a Grievance Hearing Committee as described above, and the Grievance Hearing Committee shall meet in private and without the parties present to determine on the basis of the Statement of Grievance whether it presents sufficient grounds for a hearing.

The determination that the Statement of Grievance presents sufficient grounds for a hearing shall be made if the following are found to be true:

1. The statement contains facts which, if true, would constitute a grievance under these procedures;

2. The grievant is a student as defined in these procedures, which include applicants and former students;
3. The grievant is personally and directly affected by the alleged grievance;
4. The grievance was filed in a timely manner;
5. 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 seven (7) work days of the date the decision is made by the Grievance Hearing 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 thirty (30) calendar days following the decision to grant a Grievance Hearing. All parties to the grievance shall be given not less than ten (10) work days notice of the date, time and place of the hearing.

### **C. Hearing Procedure.**

The Grievance Hearing Committee chair is responsible for making sure that Administrative Procedures are followed and for maintaining decorum at the hearing.

The members of the Grievance Hearing Committee 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 Grievance Hearing Committee determines to proceed otherwise, each party to 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.

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Each party to the grievance may represent himself 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 Grievance Hearing Committee, 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) work 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; 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 five (5) work 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 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 tape recording, the Grievance Hearing Committee 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, either at the college or the District office, at all times, unless released to a professional transcribing service. Any party may request a copy of the tape recording.

All testimony shall be taken under oath; the oath shall be administered by the Grievance Hearing Committee 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 to be unavailable.

The Grievance Hearing Committee shall prepare and send a decision to the Grievance Officer. The decision will be forwarded by the Grievance Officer to the Grievant within fourteen (14) work days. 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 matter outside of that record. The record consists of the original grievance, any written response, and the oral and written evidence produced at the hearing.

**D. Appeal and President's Decision.**

A student prejudiced by a decision of the Grievance Hearing Committee shall be entitled to appeal that decision to the President of the college. The appeal shall be made in writing to the President within thirty (30) calendar days of receipt of the Grievance Hearing Committee's decision. The President shall review the appeal and the Grievance Hearing Committee's findings and conclusions and render a decision. Within seven (7) work days following the receipt of the request for appeal, the President shall prepare and send a decision to the Grievant. The decision of the President shall be final.

**E. Time Limits.**

Any times specified in these procedures may be shortened or lengthened if there is mutual concurrence by all parties.

*See Board Policy 5500—Student Rights and Responsibilities*

Effective 1/20/06

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