STUDENT RIGHTS AND GRIEVANCES

References: *Education Code, Section 76224(a);*
Title IX, Education Amendments of 1972;
Title 5, Section 51023.7

Note: Complaints under Section 504 and/or Americans with Disabilities Act are made to the Section 504 Coordinator in Office of Student Services. Complaints of sexual harassment and other forms of unlawful discrimination are made to the Human Resources Compliance Coordinator in the Office of the Vice President for Human Resources.

The student is encouraged to pursue academic studies and other college-sponsored activities that will promote intellectual growth and personal development. In pursuing these ends, the student should be free of unfair and improper action by any member of the academic community. A grievance may be initiated by a student when he/she believes he/she has been subject to an unjust action or denial of rights as stipulated in college regulations and in the state education and administrative codes. Such action may be instituted by the student against another student, faculty, administrator or other staff member. A grievance must be initiated no later than the end of the term during which the incident occurred. Where a student believes an injustice has taken place, the student may seek resolution through the following procedures.

I. <u>Student Grievance Procedures</u>

Grievances may include, but are not limited to;

- Harassment/Intimidation
- Discriminatory actions
- Arbitrary action or imposition of sanctions by a college representative

Grade and grading disputes are addressed within this administrative procedure. Students should refer to the “Student Grade Dispute Procedure – Section II” found in this procedure.

The procedure does not apply to:

- Student Disciplinary records covered by Procedure No. 5500 - Standards of Student Conduct
- Police citations; complaints about citations must be directed to the Campus Police or San Diego County Superior Court in the same way as any traffic violation.
- Appeals for residency determination. Residency appeals are filed with Admissions and Records.
- Evaluation of professional competence, qualifications or job performance of any College District employee.

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A grievance exists when such an error of offense has resulted in an injury or harm that may be corrected through this grievance procedure. As noted, there may be other procedures applicable to various other alleged injuries or harms, and this grievance procedure may not be the sole or exclusive remedy, and it may not be necessary to exhaust this process before presenting allegations to other College District or government agencies.

The Superintendent/President shall appoint the Dean of Student Services or his/her designee to assist students in seeking resolution.

Informal meetings and discussion between persons directly involved in the grievance are essential at the outset of a dispute and should be encouraged at all stages. An equitable solution should be sought to avoid persons involved in the case becoming polarized, which could render a solution more difficult to achieve.

At no time shall any persons directly or indirectly involved in the case use the facts, the information which has been discussed, or the character of the informal discussion for the purpose of strengthening the case for or against persons directly involved in the dispute for any other purpose other than the settlement of the grievance.

The determination of whether the Report of Student Grievance presents sufficient grounds for review shall be based on the following:

- The grievant must be a student, which include applicants and former students.
- The grievant is personally and directly affected by the alleged grievance.
- The grievance was filed in a timely manner.
- The grievance is not frivolous, clearly without foundation, or filed for the purpose of harassment.

The Report of Student Grievance must include the following:

- A clear and concise statement of the grievance
- Name(s) of the individuals against who the grievance is being filed.
- Identify the resolution, corrective action or remedy being sought.
- Summary of actions already taken to attempt to resolve the issue.

The Report of Student 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.

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Preliminary Action Procedure

1. The student who believes an injustice has occurred shall attempt to resolve the grievance by informal consultation with the student, staff, faculty or administrator concerned.

2. If this proves to be less than satisfactory, the student will inform the School/Center Dean or Supervisor of the area.

Formal Grievance

3. If the student still believes that the issue has not been resolved satisfactorily through the informal resolution process, the student shall submit a completed "Report of Grievance" to the Dean of Student Services. In cases in which the College District Police Department has been involved or in which the situation has become an issue of safety, the preliminary actions need not be adhered to.

4. The Dean of Student Services shall confer with the student for the purpose of reviewing the grievance and attempting to resolve the matter.

5. The Dean of Student Services or designee may also obtain information relating to the grievance from other parties involved.

The Dean of Student Services will notify each party of the following actions being considered:

- Dismissal of the grievance for lack of merit.

- Agreement among parties to work towards an equitable solution.

- Remand of the case to a formal hearing. (See Guidelines for Due Process in this procedure)

- Charges are filed against the student for misconduct. (See Procedure No. 5500 - Standards of Student Conduct)

From the date the student is notified of the Administrator's decision, any request for a hearing to the Grievance and Order Committee must be received postmarked or hand delivered in three (3) working days. Appeals shall be made in writing and delivered to the office of the Dean of Student Services.

The Dean of Student Services shall arrange a review of the case by formal hearing to consider the disposition. Please see Guidelines for Due Process in this procedure.

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II. STUDENT GRADE DISPUTE PROCEDURES

If a student feels that an instructor has given him/her a grade based on prejudiced or capricious action in the evaluation of the student's academic performance, the student must to be able to substantiate the claim by showing evidence of a mistake, fraud, bad faith, and/or incompetence.

California Education Code Section 76224 states:

> 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.

Students should note the following definitions which are taken from Black's Law Dictionary:

• **Mistake** - some unintentional act, omission, or error by the instructor,

• **Fraud** - an intentional perversion of the truth for the purpose of inducing another to part with something valuable or to surrender a legal right;

• **Bad Faith** - synonymous with fraud neglect, or refusal to fulfill some duty or contractual obligation, not prompted by an honest mistake as to one's rights or duties;

• **Incompetence** - lack of ability, legal qualification, or fitness to discharge a required duty.

If the student feels that an instructor has given a grade based on a mistake, fraud, bad faith, or incompetence, and the student has evidence to substantiate the claim, these steps must be followed:

1. The student must contact his/her instructor to discuss, clarify, and attempt to resolve the grade dispute in person, via electronic mail, or in writing within 30 working days of the time the official grade report was posted on WebAdvisor or on the official transcript. Grades are posted within one week after the end of a semester or term. If the concern is not resolved satisfactorily, then:

2. The student must discuss the matter with the School/Center Dean or Designee in person, via electronic mail or in writing within 10 working days. The School/Center Dean or Designee will try to resolve the dispute and will respond to the student in

writing.

3. If the concern is still unresolved the student must within 10 working days after receiving written response from the School/Center Dean or designee, discuss the matter with the Vice President for Academic Affairs or designee in person, via electronic mail or in writing. The Vice President for Academic Affairs, in consultation with the Academic Senate President, will render a final decision in writing within 15 working days.

4. The decision made by the Vice President for Academic Affairs or designee, in consultation with the Academic Senate President, will be final. There will be no requests granted for a due process hearing.

GUIDELINES FOR DUE PROCESS

Procedural due process is the method established to resolve faculty, staff, and student conduct issues in a clear, fair, and orderly manner. These procedures apply to actions which interfere with or exert a harmful effect upon the function of the College District. Due process is intended to achieve an equitable solution that will resolve the issue with due regard for the rights of the accused, the protection of the student body, and the interest of the College District. Any action taken by a student under this due process procedure shall preclude any further action.

The implementation of procedural due process on campus will consist of the following due process procedures, and will take place within a reasonable length of time.

I. PRELIMINARY ACTION PROCEDURE

A. SUBMITTING OF OFFICIAL FORMS

The Dean of Student Services shall receive any charge of alleged student grievance. Charges may be made by a student against another student, faculty, staff or administrator. The complainant shall file a Report of Student Grievance form with the Dean of Student Services hereafter called “Administrator”.

B. NOTIFICATION OF CHARGES

Students, faculty, staff or administrators charged with a Student Grievance shall be notified that they are required to schedule an appointment with the Administrator to discuss such alleged violations. The notice will be mailed to the student's address on file in the College District's Admissions Center by US Mail and either Certified or FedEx mail. Staff, faculty and/or administrators will be contacted by College District email.

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A student who does not report to the Office of Student Services to address a student grievance report will have an administrative hold placed on his/her records, in addition to possibly being dropped from his/her classes.

C. PRELIMINARY MEETING

The meeting with the Administrator shall consist of the following:

1. A copy of the Procedure No. 5530 - Student Rights and Grievance - is given to the student.

2. The administrator and the student review the alleged student grievance.

3. The administrator informs the student, staff, faculty and/or administrator of the process which will be followed.

D. ADMINISTRATOR ACTIONS

The Administrator will obtain information relating to the charge from the student and other persons.

The Administrator will notify each party regarding any of the following actions:

- Dismiss the grievance for lack of merit.

- Work towards an equitable solution.

- Remand the case to a formal hearing. (See Guidelines for Due Process in this procedure)

- Charge the student with misconduct. (See Procedure No. 5500 - Standards of Student Conduct)

A letter notifying the parties of the Administrator's decision shall be sent by US Mail and either certified or FedEx mail, specifying the mailing date of such letter. Staff, faculty and/or administrators will be contacted by College District email. The Administrator is deemed to have notified the student, faculty, staff and/or administrator of his or her decision on the date.

E. APPEAL TO GRIEVANCE AND ORDER COMMITTEE

From the date the parties are notified of the Administrator's decision, any request for a hearing to the Student Grievance and Order Committee must be received postmarked or

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hand delivered in three (3) working days. Any appeal shall be made in writing and delivered to the Office of the Dean of Student Services.

The Administrator will convene the Grievance and Order Committee to conduct the hearing when school is in session, including the summer session.

II. HEARING PROCEDURE

A. FORMAL HEARING PROCESS

The Formal Hearing Process is the College District's administrative due process to resolve student grievances that are not resolved by informal actions. Parties are allowed to present testimony and witnesses to support their positions.

B. THE HEARING PANEL

There shall be a standing Grievance and Order Committee which the members are appointed to a Grievance and Order hearing panel, as needed. The Grievance and Order Committee shall be comprised of at least one member from each of the following groups:

1. Two students and two alternates (enrolled in 6 or more units) who shall be appointed by the ASO president and;

2. Two full-time faculty and two alternates who shall be appointed by the Academic Senate and;

3. Two full-time classified personnel and two alternates except those designated as management, who shall be appointed by the Classified Senate and/or Classified Union and;

4. Two full-time management personnel and two alternates (who shall be appointed by the Superintendent/President) with the exception of the Vice President for Student Affairs and Dean of Student Services.

C. SCOPE OF THE STUDENT GRIEVANCE AND ORDER HEARING

The Grievance and Order hearing panel shall limit the scope of its appeal hearing to the following:

1. Determine if the evidence supports the findings of the Administrator.

2. Determine if the action levied by the Administrator is within range of student grievance actions delineated in Procedures 5530 Student Rights and Grievances.

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3. Make recommendations to the Dean of Student Services or designee.

D. RESPONSIBILITIES OF THE CHAIRPERSON

The Chairperson shall preside over the hearing and make rulings as to its conduct. Disruptive behavior will not be tolerated and will result in exclusion of the person(s) from the proceedings.

E. RIGHT TO REPRESENTATION

This is an internal due process hearing conducted by Southwestern College. Parties are allowed to present testimony and witnesses to support their positions. However, parties are not allowed to be represented by legal counsel at any time during the hearing process.

F. FORMAL HEARING ORDER OF PROCEEDINGS

1. Opening

   The Chair shall call the hearing to order, introduce the participants, explain the hearing is being recorded and proceedings are confidential, and announce the purpose of the hearing, e.g., “The Committee meets to hear an appeal of grievance against (person’s name) and/or to submit its findings to the Administrator”.

2. Evidence for hearing

   Any and all evidence will be entered for the record.

3. Challenge of a Committee member

   Refer to Section J – Right to Challenge Committee Composition - in this procedure.

4. Request for Open Hearing

   Refer to Section area K - Open and Closed hearing in this procedure. All hearings are closed, unless otherwise requested.

5. Identification of witnesses

   Witnesses are to identify themselves and state for the record, the reason for their presence.

6. Swearing in of both parties

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Swear in both the complainant and defendant by the Administrative Secretary

7. Opening Statements

   Both parties will make opening statements.
   Person who filed charges will make first opening statement
   Each party will be given five minutes.

8. Questioning Protocol

   Grievance and Order hearing-panel members may ask questions of both parties.
   Parties may submit questions to the chair.
   The Chair will pose questions to appropriate party.
   Rebuttal two minutes each.

9. Calling Witnesses

   Witnesses are sworn in by the Administrative Secretary
   Witnesses are questioned by committee members
   Parties may submit questions to Grievance and Order hearing chair

10. Closing Statements

    Both parties will make closing statements.
    Person who filed charges will make first closing statement.
    Each party will be given five minutes.

G. BURDEN OF PROOF AND OF PRODUCING EVIDENCE

The person seeking appeal has the burden of proving that the evidence filed in the Report of Student Grievance did not support the Administrator's findings. The student filing the grievance may present evidence in support of his or her position, and then the other person may present evidence to refute such evidence.

H. ARGUMENTS

Arguments will be presented first by the student filing the Report of Student Grievance. The student shall be afforded an opportunity to make or waive an opening statement. After the opening statements, the student filing the Report of Student Grievance shall have the first opportunity to present witnesses and other relevant evidence. Then the other person shall have the opportunity to present witnesses and other relevant evidence.

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I. EVIDENCE

- Irrelevant and unduly repetitious evidence shall be excluded.
- All evidence will be submitted 24 hours (one working day) prior to hearing.

J. RIGHT TO CHALLENGE COMMITTEE COMPOSITION

The person charged in the Report of Student Grievance may challenge any member of the Grievance and Order hearing panel for cause. Grounds for cause shall be limited to any personal involvement in the situation, any statement made on the matters at issue, or any other act or statement indicating that person could not act in a neutral manner. Validity of any such challenges shall be determined by the Chair of the hearing panel. Five (5) panel members will be the minimum number to conduct a hearing.

K. OPEN**/**CLOSED HEARINGS

1. Hearings shall be confidential and closed to the general public, and witnesses shall be present only when testifying unless the student requests an open hearing. Both the student filing the Report of Student Grievance and the other party shall be entitled to call witnesses. Any questions directed to the witnesses shall be in writing and given to the chair.

2. Members of the hearing panel may ask questions to either party upon recognition by the Chairperson. Either side may recall a witness, who again may be questioned by the hearing panel.

3. A brief caucus may be called by the Chairperson or any member, with all other person's excused except for the Grievance and Order hearing panel.

4. The hearing shall be recorded. The recording may be used by the Superintendent/ President, in case of an appeal.

L. ABSENCE OF THE COMPLAINANT AND/OR THE DEFENDANT

It is imperative that all parties are present during the hearing process. Disruptive behavior will result in removal of the person(s), and the hearing will continue in their absence. If the student(s) and/or the College District staff person(s) who are involved in the Report of Student Grievance do not appear, or leaves the hearing before its conclusion, the hearing shall proceed without the absent parties, and the hearing panel shall reach a decision based on the evidence presented.

M. CONCLUSION

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The opportunity to make or waive a closing argument will be made first by the student filing the Report of Student Grievance. The hearing panel shall recess to deliberate in closed session with all of the members. The Administrator and if appropriate the appointed college legal counsel, may be present to advise. The hearing panel shall reach its decision based upon the record of the hearing and shall not consider matters outside of that record.

Within one working day of the hearing, the Chairperson shall deliver to the administrator a written decision arrived at by majority vote of the hearing panel. The hearing panel's decision may include one of the following recommendations**:**

- Exoneration
- Written warning
- Any other recommendation(s) that the committee members deem necessary for a successful resolution.

N. FINAL ACTION

Upon receiving the findings and recommendations of the hearing panel, the Administrator shall render a decision within three (3) working days and transmit in writing to the person the Grievance and Order hearing panel and other appropriate administrative officers by US mail and either Certified or FedEx mail. Staff, faculty and/or administrators may be contacted by College District email.

III. APPEAL TO THE SUPERINTENDENT/PRESIDENT

From the date the person is notified of the Administrator's decision, any request for an appeal to the Superintendent/President must be received postmarked or hand delivered in three (3) working days. Any appeal shall be made in writing and delivered to the Office of the Superintendent/ President.

The Superintendent/President may do the following:

- Concur with the hearing panel's findings and recommendations and the Administrator decision.
- Revise the recommendation and/or actions of the hearing panel and Administrator.

The letter rendering the Superintendent/President's decision shall be mailed to the student by US Mail and either certified or FedEx mail.

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IV. GLOSSARY OF TERMS

A. ADMINISTRATOR - The Dean of Student Services or Designee.

B. PRESIDENT - The Superintendent/President of the District or Designee.

C. CAMPUS POLICE - Southwestern College District College Police.

D. DAY - When the college is in regular session and regular classes are held.

E. REPORT OF STUDENT GRIEVANCE

- Complainant - Student filing a Report of Student Grievance.
- Defendant - Staff, faculty and/or administrator being charged

F. COLLEGE / COLLEGE DISTRICT- Southwestern Community College District.