

AP 5520 STUDENT DISCIPLINE AND DUE PROCESS**References:**

Education Code Sections 66017, 66300, 72122, 76030, 76032 and 76120 et seq.;
Penal Code Section 626.4

The purpose of this procedure is to provide a prompt and equitable means of addressing alleged violations of the Standards of Conduct that guarantees the student of students involved the due process rights granted them under state and federal constitutional protections. This procedure will be used in a fair and equitable manner, not for purposes of retaliation. It is not intended to substitute for criminal or civil proceedings that may be initiated by other agencies.

These Administrative Procedures are specifically intended not to infringe in any way on the rights of students to engage in free expression as protected by the state and federal constitutions, and by Education Code section 76120, and will not be used to punish protected expression.

A. Definitions:

1. **Class:** Any scheduled instructional period held on any day of the week.
2. **Day:** A day that the District is in session and regular classes are held, excluding Saturdays and Sundays.
3. **District:** The Marin Community College District.
4. **DSAA:** The Director of Student Activities & Advocacy or a designee acting in the place of the DSAA.
5. **Expulsion:** Permanent exclusion of the Student by the Board of Trustees from the District and all District programs.
6. **Instructor:** Any academic employee of the District in whose class a student subject to discipline is enrolled, or any counselor or librarian who is providing or has provided services to the student, or any other academic employee who has responsibility for the student's educational program.
7. **Long-term Suspension:** Exclusion of the Student by the VPSL/SS for good cause from one or more classes for 11 or more Days, for the remainder of the school term, or from all classes and activities of the District for one or more terms.
8. **Notice:** Written notice to the Student from the DSAA of the Student's alleged conduct that is purported to have violated the District's Standards of Student Conduct (BP 5500).
9. **President:** The Superintendent/President of the Marin Community College District.

10. **Removal from class:** Exclusion of the Student by an Instructor from his or her class for the day of the removal and the next class meeting.
11. **Short-term Suspension:** Exclusion of the Student for good cause by the VPSL/SS from one or more classes for a period of up to 10 consecutive Days.
12. **Student:** The individual currently enrolled as a student in any program offered by the District who is subject to discipline under these procedures.
13. **VPSL/SS:** Vice President of Student Learning & Student Services.
14. **Withdrawal of Consent to Remain on Campus:** Withdrawal of consent by the President or the District Chief of Police for any person to remain on campus in accordance with California Penal Code Section 626.4 when the President or the District Chief of Police has reasonable cause to believe that such person has willfully disrupted the orderly operation of the campus.
15. **Written or verbal reprimand:** An admonition to the Student to cease and desist from conduct determined to violate the Standards of Student Conduct. Written reprimands may become part of the Student's permanent record at the college. A record of the fact that a verbal reprimand has been given may become part of the Student's record at the college for a period of up to one year.

B. Short-term Suspensions, Long-term Suspensions, and Expulsions: Before any disciplinary action to suspend or expel is taken against a student, the following procedures will apply:

1. **Notice:** The DSAA will provide the Student with Notice of the alleged misconduct warranting discipline. The District will serve the Notice on the Student by personal delivery or sending copies by certified mail and by email to the Student's postal and email addresses on file. The Notice will include the following:
 - a) The specific section(s) of the Standards of Student Conduct that the Student is alleged to have violated;
 - b) The alleged Student misconduct that purportedly violated one or more of the Standards of Student Conduct;
 - c) The right of the Student to meet with the DSAA or designee to discuss the alleged misconduct, or to respond in writing; and
 - d) The nature of the discipline that is being considered.
2. **Time limits:** The Notice must be provided to the Student within 15 Days of either (1) the date on which the alleged conduct took place or (2) the date on which the District became aware of the alleged conduct. In the case of continuous, repeated, or ongoing conduct, the Notice must be provided within 15 Days of the date on which the conduct occurred that led to the decision to take disciplinary action.

3. **Meeting:** If the Student chooses to meet with the DSAA, the meeting must occur no sooner than 5 Days after the District sends the Notice to the Student in order to provide the Student with time to prepare for the meeting, unless the Student requests to meet sooner. At the meeting, the Student must again be told the allegations of fact(s) about the Student's conduct alleged to constitute violation(s) of the Standards of Student Conduct, and the Student must be given an opportunity to respond verbally or in writing to the allegations. The DSAA may adjourn the meeting to investigate alleged facts or issues raised by the Student and reconvene the meeting following the investigation.
4. **DSAA's Recommendation:** Upon completion of the investigation, and after the Student has been given the opportunity to respond to the allegations, if the DSAA finds that the Student violated the District's Standards of Student Conduct, the DSAA may recommend that the VPSL/SS impose disciplinary sanction(s) against the student. The DSAA shall prepare a written recommendation that includes findings of fact as to each allegation against the Student and determination(s) regarding the specific section(s) of the Standards of Student Conduct that the Student was found to have violated. The DSAA shall submit his or her recommendation to the VPSL/SS within 5 Days after the meeting described above is concluded.
5. **VPSL/SS's Decision:** Within 5 Days of receiving the DSAA's recommendation, the VPSL/SS will make a determination and the District will serve a notice with the VPSL/SS's decision on the Student by (1) personal delivery or (2) sending copies by certified mail and by email to the Student's postal and email addresses on file. VPSL/SS decisions may include those that follow:
 - a) **Short-term Suspension:** If the DSAA recommends a short-term suspension, the VPSL/SS may decide whether to impose a short-term suspension, whether to impose some lesser disciplinary action and/or educational sanctions, or whether to dismiss the charges. The District will send written notice of the VPSL/SS's decision to the Student. The notice will include the length of time of any suspension or the nature of the lesser disciplinary action. The VPSL/SS's decision on a short-term suspension or lesser sanction shall be final.
 - b) **Long-term Suspension:** If the DSAA recommends a long-term suspension, the VPSL/SS may decide to impose a long-term suspension, a short-term suspension, some lesser disciplinary action, or to dismiss the charges. The VPSL/SS's decision to impose a short-term suspension or lesser sanction shall be final. If the VPSL/SS decides to impose a long-term suspension, the District will send written notice of the VPSL/SS's decision to the Student. The notice will advise the Student of his or her right to request a formal hearing before a long-term suspension is imposed. With the notice, the District must send a copy of this AP 5520 describing the procedures for formal hearings.
 - c) **Expulsion:** If the DSAA recommends expulsion, the VPSL/SS may (1) recommend expulsion to the President, (2) impose some lesser disciplinary action, or (3) dismiss the charges. The District shall provide the Student with written notice of the VPSL/SS's recommendation to the President or the VPSL/SS's decision regarding lesser discipline or dismissal.

If the VPSL/SS recommends expulsion or imposes a Long-Term Suspension, the notice shall include information advising the Student of his or her right to request a formal hearing before Expulsion or a Long-Term Suspension is imposed and shall include a copy of this AP 5520 describing the procedures for a hearing.

If the Student does not request a hearing, or if a hearing is held and the hearing panel recommends expulsion to the President, the President may recommend expulsion to the Board of Trustees, impose a lesser disciplinary sanction against the Student, or dismiss the charges.

If the President imposes a lesser disciplinary sanction or dismisses the charges, the President's decision shall be final. Only the District's Board of Trustees holds the authority to expel a Student.

6. Hearing Procedures

- a) **Request for a Hearing:** Within 5 Days after the District sends the student notice of the VPSL/SS's decision to impose a long-term suspension or to recommend expulsion to the President, the Student may request a formal hearing. The Student's request must be made in writing and submitted to the VPSL/SS or designee by 5:00 p.m. on the 5th Day after the District sends the VPSL/SS's decision to the Student. If the Student fails to submit a timely request for a formal hearing, the Student shall be deemed to have waived his or her right to have a hearing.
- b) **Scheduling the Hearing:** The District will convene a formal hearing within 10 Days after receipt of a timely Student request for a formal hearing. For good cause, the President may extend this period as he or she deems necessary.
- c) **Hearing Panel:** Except as otherwise specified, the hearing panel for any disciplinary action shall be composed of one administrator, one faculty member, and one student. If the disciplinary matter involves allegation(s) of sexual violence, the alleged victim and the accused shall each independently have the right, upon submission of a written request submitted to the VPSL/SS at least three Days before the date scheduled for the hearing, to have the student on the panel replaced with an administrator who shall be appointed by the President.

The President, the president of the Academic Senate, and the president of the Associated Students shall each, at the beginning of the academic year, establish a list of at least five people who will serve on student disciplinary hearing panels. The President shall appoint administrators, the president of the Academic Senate shall appoint faculty members, and the president of the Associated Students shall appoint students.

The President shall appoint the hearing panel from the listed names. However, no administrator, faculty member, or student 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.

The President shall appoint one member of the panel to serve as the chair. The decision of the hearing panel chair shall be final on all matters relating to the conduct of the hearing unless there is a vote by both other members of the panel to the contrary.

7. Conduct of the Hearing

- a) The members of the hearing panel shall be provided, before the hearing begins, with a copy of the allegations of fact(s) about the Student's conduct alleged to constitute violation(s) of the Standards of Student Conduct and any written response provided by the Student.
- b) Evidence of the Student's alleged misconduct shall be presented by a college representative who shall be the DSAA or designee.
- c) The college representative and the Student may call witnesses and introduce oral and written testimony relevant to the issues of the matter.
- d) Formal rules of evidence shall not apply. Any relevant evidence shall be admitted. The Chair may exclude irrelevant, immaterial, and unduly repetitious evidence. Evidence not directly related to the alleged violation(s) including, but not limited to, personal character references, is not admissible.
- e) Unless the hearing panel elects to proceed otherwise, the college representative and the Student shall each be permitted to make an opening statement. Thereafter, the college representative shall make the first presentation, followed by the Student. The college representative may present rebuttal evidence after the Student completes his or her presentation of evidence. The burden shall be on the college representative to prove by a preponderance of the evidence (more likely than not) that the facts alleged are true.
- f) The Student may represent himself/herself, and he or she has the right to be represented by a person of his/her choice, except that the Student shall not be represented by an attorney unless, in the judgment of the hearing panel, complex legal issues are involved. If the Student wishes to be represented by an attorney, the Student must submit a written request to the VPSL/SS not less than 3 Days prior to the date of the hearing. If the hearing panel permits the Student to be represented by an attorney, the college representative may request legal assistance. In all cases, the hearing panel may 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.
- g) The hearings shall be closed and confidential unless the Student requests that it be open to the public. Any such request must be made submitted in writing to the VPSL/SS no less than 3 Days prior to the date of the hearing. The panel may deny the request in order to protect the privacy interests of other parties, such as an alleged victim of the Student's alleged misconduct.
- h) Witnesses, except the Student, shall not be present at the hearing when not testifying unless all parties and the panel agree to the contrary.
- i) The hearing shall be recorded by the District either by tape recording (or similar recording technology) or stenographic recording. No other recording shall be permitted. No witness who refuses to be recorded may be permitted to give testimony. The hearing panel chair shall, at the beginning of the hearing, ask each person present to identify himself/herself by name, and thereafter shall ask witnesses to identify themselves by name. The audio recording of the hearing 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.

- j) All testimony shall be taken under oath; the oath shall be administered by the hearing panel 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 audio recorded is not considered unavailable.
- k) Within 10 Days following the close of the hearing, the hearing panel shall prepare and send a written recommendation to the VPSL/SS. The recommendation shall include specific factual findings regarding each allegation of misconduct and specific conclusions regarding whether the Student violated any specific section(s) of the Standards of Student Conduct. The hearing panel shall also provide a specific recommendation regarding disciplinary action(s), if any, to be imposed. The recommendation shall be based only on the record of the hearing and not on any matter outside of that record. The record consists of the original allegations of misconduct and alleged violations of Standards of Student Conduct, the Student's written response, if any, and the oral and written evidence produced at the hearing.

8. Decision Following a Hearing:

- a) **Timeline for VPSL/SS's Decision or Recommendation:** Within 10 Days following receipt of the hearing panel's recommended decision, the VPSL/SS shall (1) render a final written decision imposing a Long-Term Suspension, a lesser disciplinary sanction, or dismissing the charges; or (2) make a recommendation to the President to recommend expulsion to the Board of Trustees. The VPSL/SS may accept, modify, or reject the findings, decisions, and recommendations of the hearing panel. If the VPSL/SS modifies or rejects the hearing panel's decision, the VPSL/SS shall review the record of the hearing and shall prepare a written decision containing specific factual findings and conclusions.
- b) **Long-term suspension:** If the VPSL/SS decides to impose a Long-Term suspension, or other sanction less severe than expulsion, the decision of the VPSL/SS shall be final.
- c) **Expulsion Recommendation:** If the VPSL/SS decides to accept the findings and recommendations of the hearing panel, the VPSL/SS may incorporate them by reference into his or her letter to the President recommending expulsion.

If the VPSL/SS decides that it is appropriate to expel the Student beyond the recommendations of the hearing panel, the VPSL/SS shall send his or her written recommendation to expel the Student to the President along with a written decision containing specific factual findings and conclusions.

The President may either recommend expulsion to the Board of Trustees or refer the matter back to the VPSL/SS directing him or her to impose a lesser disciplinary sanction or dismiss the charges. If the President recommends expulsion, he or she shall render and send the recommendation in writing to the Board.

- d) **Board of Trustees Decision on Expulsion Recommendation**

- (1) The Board of Trustees shall consider any recommendation from the President for expulsion at the next regularly scheduled meeting of the Board after receipt of the recommended decision.
- (2) 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).
- (3) The Student shall be served with notice of the date, time, and place of the Board's meeting by registered or certified mail or by personal service, at least three days prior to the meeting.
- (4) The Student may, within forty-eight hours after service of the notice, request that the hearing be held as a public meeting by submitting a written request to the President.
- (5) Even if the 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 other student or an employee in closed session. Following consideration of an expulsion recommendation in a public meeting, the Board shall deliberate in closed session.
- (6) The Board may accept the findings, decisions, and recommendations of the President or reject the President's recommendation and refer the matter back to the President for further action, if any. The decision of the Board whether to expel the Student shall be final. If the Board refers the matter back to the President, he or she may impose a lesser disciplinary sanction or dismiss the charges.
- (7) The final action of the Board on an expulsion recommendation shall be taken at a public meeting, and the result of the action shall be a public record of the District.

9. Service of Notices: Except as otherwise specified in these procedures, written notices shall be served by (1) personal delivery or (2) certified mail and by email to the Student's postal and email addresses on file. It is the Student's responsibility to ensure that the District has the Student's current postal and email addresses on file. Notice shall be deemed served two days after deposit in the mail with postage prepaid, upon personal delivery, upon receipt of a Student's reply to an email notification, or a Student's verbal confirmation that he or she received the notice. Service by mail on the President, VPSL/SS, or the DSAA shall be at 835 College Avenue, Kentfield, CA 94904.

10. Time Limits: Any times specified in these procedures may be shortened or lengthened if there is mutual agreement by all parties.

C. Immediate Interim Suspension (Education Code Section 66017): The President may order immediate suspension of a student when he/she concludes that immediate suspension is required to protect lives or property and to ensure the maintenance of order. In cases in which 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 when a long-term suspension or expulsion is recommended, will be afforded to the Student within 10 calendar days.

D. **Removal from Class** (Education Code Section 76032): Any Instructor may remove a student from his/her class for the day of the removal and the next class meeting. The Instructor shall immediately report the removal to the President, the VPSL/SS, and the DSAA via a COM Cares electronic report or other reasonable means. The VPSL/SS or designee shall arrange for a conference between the Student and the Instructor regarding the removal. If the Instructor or the Student so requests, the VPSL/SS or designee 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 VPSL/SS from recommending further disciplinary sanctions in accordance with these procedures based on the facts that led to the removal.

E. **Withdrawal of Consent to Remain on Campus**

1. When there is a reasonable belief that a person has willfully disrupted the orderly operation of the campus, the College President or the District Chief of Police may notify the person that consent to remain on campus has been withdrawn. If the person is on campus at the time, he/she must promptly leave or be escorted off campus.
2. If consent is withdrawn by the Chief of Police, he or she shall submit a written report to the President as soon as possible including (1) a description of the person from whom consent was withdrawn and (2) a statement of facts giving rise to the withdrawal of consent. If the President (or designee in the President's absence), upon reviewing the report, finds that there was reasonable cause to believe that the person willfully disrupted the orderly operation of the campus or facility, he or she may enter written confirmation on the report of the action taken by the Chief of Police. If the President (or designee in the President's absence) does not confirm the action of the Chief of Police within 24 hours after the time that consent was withdrawn, the action of the Chief of Police shall be deemed void and of no force or effect, except that any arrest made during such period shall not for this reason be deemed not to have been made for probable cause.
3. The person from whom consent has been withdrawn may submit a written request to the President for a hearing on the withdrawal within the period of the withdrawal. The request shall be granted not later than 7 calendar days from the date of receipt of the request. The hearing will be conducted in accordance with the Hearing Procedures set forth herein.
4. In no case shall consent be withdrawn for longer than 14 calendar days from the date upon which consent was initially withdrawn.
5. Any person from 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 attend a meeting or hearing by invitation of a District official, is subject to arrest (Penal Code Section 626.4).

See also: Board Policy 5500 Standards of Conduct

Office of Primary Responsibility: Student Learning/Student Services

Date Approved: January 17, 2012

(Replaces part of College of Marin Procedures 4.0003 DP.10 and 4.0022 DP.1)

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