

**Student Services****AP 5530 STUDENT RIGHTS AND GRIEVANCES****References:**

Education Code Section 76224(a);  
Title IX, Education Amendments of 1972

It shall be the policy of the District to maintain a uniform system of student grievances and appeals, which shall afford procedural due process to students in the review and appeal of College and District decisions or actions. The President or designee will ensure that the system for student grievances and appeals is made known to all students by prominent inclusion in College publications and on Web sites.

A student may file a grievance when he or she believes that a faculty or staff member, or an administrator has violated College rules, policies or procedures, or other local, State, or Federal laws.

The purpose of this procedure is to provide a prompt and equitable means of resolving student grievances. These procedures 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, but not be limited to, grievances regarding:

- Sex discrimination as prohibited by Title IX of the Higher Education Amendments of 1972
- Sexual harassment
- Financial aid
- Illegal discrimination

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 incompetency, shall be final." "Mistake" may include, but is not limited to errors made by an instructor in calculating a student's grade and clerical errors.

The exercise of rights of free expression protected by state and federal constitutions and Education Code Section 76120.

This procedure does not apply to:

- Student disciplinary actions, which are covered under separate Board policies and Administrative Procedures.
- Police citations (i.e. "tickets"). Complaints about citations must be directed to the County courthouse in the same way as any traffic violation.

## **Definitions**

**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 President or a designated representative of the 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. Former students shall be limited to grievances relating to course grades to the extent permitted by Education Code Section 76224(a).

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

**Day** – Unless otherwise provided, day shall mean a day during which the college is in session and regular classes are held, excluding Saturdays and Sundays.

## **Informal Resolution**

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 local college administration.

The President shall appoint an employee who shall assist students in seeking resolution by informal means. This person shall be called the Grievance Officer. The Grievance Officer and the student may also seek the assistance of the Associated Student Organization in attempting to resolve a grievance informally.

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/she has a grievance shall file a Statement of Grievance with the Grievance Officer within ten (**10**) days of the incident on which the grievance is based. The Statement of 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. Within two 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 five (5) 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.

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.

Request for Grievance Hearing – Any request for a grievance hearing shall be filed on a Request for a Grievance Hearing within ten (10) days after filing the Statement of Grievance as described above.

Within ten (10) days following receipt of the request for grievance hearing, the President shall appoint a Grievance Hearing Committee as described above, and the Grievance Hearing Committee shall meet in private and without the parties present to select a chair and to determine on the basis of the Statement of Grievance whether it presents sufficient grounds for a hearing.

The determination of whether the Statement of Grievance presents sufficient grounds for a hearing shall be based on the following:

- The statement contains facts which, if true, would constitute a grievance under these procedures;
- The grievant is a student as defined in these procedures, 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 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 five (5) 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 ten (10) days following the decision to grant a Grievance Hearing. All parties to the grievance shall be given not less than ten (10) days notice of the date, time and place of the hearing.

### **Hearing Procedure**

The decision of the Grievance Hearing Committee chair shall be final on all matters relating to the conduct of the hearing unless there is a vote of a majority of the other members of the panel to the contrary.

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.

Each party to the grievance may represent himself/herself, and may also have the right to be represented by a person of his/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 seven (**7**) 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 through the President's Office. 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 seven (7) 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.

Within five (5) days following the close of the hearing, the Grievance Hearing Committee shall prepare and send to the President a written decision. 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.

President's Decision: Within five (5) days following receipt of the Grievance Hearing Committee's decision and recommendation(s), the President shall send to all parties his/her written decision, together with the Hearing Committee's decision and recommendations. The President may accept or reject the findings, decisions and recommendations of the Hearing Committee. The factual findings of the Hearing Committee shall be accorded great weight; and if the President does not accept the decision or a finding or recommendation of the Hearing Committee, the President shall review the record of the hearing, and shall prepare a new written decision which contains specific factual findings and conclusions. The decision of the President shall be final, subject only to appeal as provided below.

Appeal: Any appeal relating to a Grievance Hearing Committee decision that the Statement of Grievance does not present a grievance as defined in these procedures shall be made in writing to the President within five (5) days of that decision. The President shall review the Statement of Grievance and Request for Grievance Hearing in accordance with the requirements for a grievance provided in these procedures, but shall not consider any other matters. The President's decision whether or not to grant a grievance hearing shall be final and not subject to further appeal.

Any party to the grievance may appeal the decision of the President after a hearing before a Grievance Hearing Committee by filing an appeal with the President. The President may designate a College administrator to review the appeal and make a recommendation.

Any such appeal shall be submitted in writing within five days following receipt of the President's decision and shall state specifically the grounds for appeal.

The written appeal shall be sent to all concerned parties. All parties may submit written statements on the appeal.

The President or designee shall review the record of the hearing and the documents submitted in connection with the appeal, but shall not consider any matters outside of the record. Following the review of the record and appeal statements, the President's designee, if any, shall make a written recommendation to the President regarding the outcome of the appeal.

The President may decide to sustain, reverse or modify the decision of the President's designee. The President's decision shall be in writing and shall include a statement of reasons for the decision. The President's decision shall be final.

The decision on appeal shall be reached within five days after receipt of the appeal documents. Copies of the President's appeal decision shall be sent to all parties.

### **Time Limits**

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

### **ACADEMIC GRIEVANCE**

An academic grievance may be filed when a student feels that a faculty member has violated State or Federal law, or College or District policies and procedures relative to grading or other academic areas. All grade appeals are first handled with the specific instructor, then in order with the Department Chair, the Division Chair, the Vice President of Instruction, the College President, the Chancellor, and the Board of Trustees.

The Education Code provides that all grades awarded by the instructor of record shall be final. The California Code of Regulations, Title 5 Section 55760, permits a grievance to be filed with respect to grading only in situations where a grade was assigned due to mistake, fraud, bad faith, or incompetence.

## **GENERAL STUDENT GRIEVANCE**

A general student grievance may be filed by a student who feels an action of a faculty or staff member, administrator, office, or group violates existing College or District rules, policies, or procedures; or other local, State, or Federal laws.

An explanation of the procedures for submitting student grievances and appeals shall be made available to students in the Student Handbook of each College and shall set forth the appropriate procedure at the respective College, District, and Board levels. A grievance may arise from a decision or action that has an adverse effect on a student with respect to his/her education rights. It may arise when a student believes he/she has been denied education rights provided by college, state and federal policies, rules, or laws. A student may seek redress through the following procedures:

### **Procedures**

Step 1. The complainant will first attempt to resolve his/her grievance by discussion with the person or group directly involved in the matter within five (5) working days after the occurrence of the alleged grievance.

Step 2. If the issue is not resolved to the satisfaction of the complainant, there shall be a conference within five (5) working days of Step 1. This conference shall include the principals involved i.e., the complainant, the accused, and the immediate supervisor. Prior to arranging the meeting, the supervisor shall check with the accused to ensure that the complainant has met with the accused.

The supervisor shall hear from both parties and seek to resolve the matter. The supervisor shall then provide a written summary of findings to the Vice President of Student Services, complainant and respondent.

Step 3. If the issue has not been resolved satisfactorily after the complainant has completed the procedures outlined in Step 1 and Step 2, the complainant shall declare that a grievance exists and shall submit a written statement to the Vice President of Student Services. The grievance must be submitted on the Grievance Report Form within five (5) working days of Step 2. The form may be obtained from the Office of the Vice President of Student Services.

Step 4. With the receipt of the complainant's written grievance and the supervisor's Summary of Findings, the Vice President of Student Services will ensure that the grievance issues contained on the complainant's Grievance Form are consistent with

those issues contained in the supervisor's Summary of Findings. The Vice President of Student Services may dismiss a grievance that has been determined to be inconsistent.

Step 5. If needed, the Vice President of Student Services shall set the time, date, and location for a formal grievance hearing. The hearing shall be held within ten (10) working days of the grievance being submitted.

### **Grievance Hearing**

1. The grievance hearing shall involve the complainant, the accused, the appropriate supervisor, and the Vice President of Student Services. The principals involved in the matter may have one representative present at the grievance hearing.
2. Individuals participating in the grievance hearing shall discuss the charge(s), hear testimony, receive all available evidence pertaining to the charge(s), and when appropriate, examine witnesses. Either party will be notified in advance of the hearing if witnesses will be present.
3. The complainant shall assume the burden of proof.
4. The Vice President of Student Services shall judge the testimony and evidence and limit the investigation strictly to the complainant's charge(s).
5. A record of the proceedings shall be maintained by the Vice President of Student Services. A transcript of the hearing will be provided to the complainant and to the accused.
6. Within ten (10) working days after the grievance hearing, the Vice President of Student Services shall submit his/her recommendation(s) to the President. If the President is involved in the dispute, the recommendation(s) shall be forwarded to the District Governing Board.
7. Within five (5) working days of the receipt of the Vice President of Student Service's recommendation, the President shall render a decision and shall forward it to the complainant and to the accused.

### **Appeal Procedure**

The complainant or accused may appeal the President's decision to the Chancellor. The appeal shall be considered by the Chancellor. All final appeals will be brought before the District Governing Board by the Chancellor.



## Records

All records of the grievance proceedings shall be retained in a grievance file by the Vice President of Student Services. Only the principals, who are directly involved in the grievance, the President, the Vice President of Academic Affairs, the Vice President of Student Services, and the appropriate campus supervisor, shall have access to the file.

## Grade Change Appeals

1. A student should submit his/her request in writing directly to the faculty member within one year after completing the course for which the grade change is being requested.
2. If the faculty member is not available, the student may submit his/her request through the Academic Council Petition process. However, only the faculty member that assigned the original grade may authorize a change of grade.
3. If there are verifiable extenuating circumstances that precluded the student from making a request within one year, the student may submit a request through the Academic Council; however, a request for change of grade may not be initiated beyond four years after completion of the course.
4. Requests that involve changing an evaluative grade (A, B, C, D, F, CR, NC) to a non-evaluative grade (W) can be done only if extenuating circumstances apply. (Extenuating circumstances are verified cases of accidents, illnesses, or other circumstances beyond the control of the student.)
5. The determination of the student's grade by the instructor shall be final in the absence of mistake, fraud, bad faith, or in competency.
6. Students will be notified when grade changes have been posted.

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**Date Approved: January 18, 2012**

*(Replaces current WVMCCD Policy 5.21 and Procedures 5.21 and 5.21.2)*