

# STUDENT GRIEVANCE

SJECCD is committed to fostering a safe, positive learning environment where students can pursue their educational goals and participate in college-sponsored activities that promote intellectual growth and personal development. To this end, students are provided protection and due process of their individual rights against unfair and improper action by any member of the district community.

If a student believes that they have been subjected to unjust action or denial of their rights under District/College rules and State/Federal laws, they will be given an opportunity to seek resolution through use of the Student Grievance Complaint Procedure. A grievance may be initiated by a student against:

1. another student,
2. a faculty member,
3. an administrator.

Grievances may be filed using the following link: [https://cm.maxient.com/reportingform.php?SanJoseEvergreenCCD&layout\\_id=5](https://cm.maxient.com/reportingform.php?SanJoseEvergreenCCD&layout_id=5) ([https://cm.maxient.com/reportingform.php?SanJoseEvergreenCCD&layout\\_id=5](https://cm.maxient.com/reportingform.php?SanJoseEvergreenCCD&layout_id=5))

## Student Rights and Grievances

### Administrative Procedure 5530

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/her status, rights or privileges as a student. The procedures shall include, but not be limited to, grievances regarding:

- Sex discrimination in education programs and activities as prohibited by Title IX of the Higher Education Amendments of 1972 (See AP 3435 Discrimination and Harassment Complaints and Investigations for sexual misconduct complaints under Title IX);
- 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.

**College 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. 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 Vice President of Student Affairs 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 five days of the incident on which the grievance is based, or five days after the student learns of the basis for the grievance, whichever is later. 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 15 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.

### Grievance Hearing Committee

The College President or designee shall at the beginning of each semester, including any summer session, establish a standing panel of four members of the college community, including one student, one

faculty member, one classified staff member, and one administrator, from which one or more Grievance Hearing Committees may be appointed.

The panel will be established with the advice and assistance of the Associated Students Organization and the Academic Senate, who shall each submit five names to the College President or designee for inclusion on the panel. A Grievance Hearing Committee shall be constituted in accordance with the following:

- It shall include one student, one faculty member, one classified staff member, and one administrator selected from the panel described above.
- 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. Any party to the grievance may challenge for cause any member of the hearing committee prior to the beginning of the hearing by addressing a challenge to the College President or designee who shall determine whether cause for disqualification has been shown. If the College President or designee feels that sufficient ground for removal of a member of the committee has been presented, the College President or designee shall remove the challenged member or members and substitute a member or members from the panel described above. This determination is subject to appeal as defined below.
- 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 days after filing the Statement of Grievance as described above.

Within ten days following receipt of the request for grievance hearing, the College President or designee 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 ten 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 days following the decision to grant a Grievance Hearing. All parties to the grievance shall be given not less than ten 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 five 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 College President or designee 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 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 ten days following the close of the hearing, the Grievance Hearing Committee shall prepare and send to the College President or designee 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.

#### **College President's or designee's Decision**

Within ten days following receipt of the Grievance Hearing Committee's decision and recommendation(s), the College President or designee shall send to all parties his/her written decision, together with the Hearing Committee's decision and recommendations. The College President or designee 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 College President or designee does not accept the decision or a finding or recommendation of the Hearing Committee, the College President or designee 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 College President or designee 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 College President or designee within ten days of that decision. The College President or designee 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 College President or designee'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 College President or designee after a hearing before a Grievance Hearing Committee by filing an appeal with the District Chancellor. The District Chancellor may designate a District administrator to review the appeal and make a recommendation.

Any such appeal shall be submitted in writing within five days following receipt of the College President or designee'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 District Chancellor 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 District Chancellor, if any, shall make a written recommendation to the College President or designee regarding the outcome of the appeal.

The District Chancellor may decide to sustain, reverse, or modify the decision of the College President or designee. The District Chancellor's

decision shall be in writing and shall include a statement of reasons for the decision. The District Chancellor's decision shall be final.

The decision on appeal shall be reached within five days after receipt of the appeal documents. Copies of the District Chancellor'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.

Also see BP/AP 3410 titled Nondiscrimination, BP/AP 3430 titled Prohibition of Harassment, AP 3435 titled Discrimination and Harassment Investigations, BP/AP 5500 titled Standards of Student Conduct, and AP 5520 titled Student Discipline Procedures