

## **BP 5531 DUE PROCESS - STUDENT DISCIPLINARY ACTION**

Students are members of both society and the academic community with attendant rights and responsibilities. Students are expected to comply with the general law as well as College policies. The procedures below apply to alleged misconduct of students on campus, or at official College events off campus.

In cases involving alleged rape, sexual assault, domestic violence, dating violence or stalking, in which both the alleged complainant and the accused are both students, of the College, as defined below, jurisdiction extends to matters which may occur either on or off campus, and which may not be limited to College events.

The following procedures outlined in sections 5531.3, 5531.4, and 5531.5 represent steps that may be employed to reach a resolution in cases of alleged misconduct. The reader should note that each case is handled individually and that while due process is always employed, some of the procedures outlined below may not be necessary in every case. Due process rights, as outlined below, do not restrict or unnecessarily delay the Title IX protections for the complainant. Questions concerning these procedures should be addressed to the Office of the Dean of Students.

### **5531.2 Definition of Terms**

- A. For the purposes of this policy, at the time an alleged violation occurs, a student is defined as an individual who:
  - 1. has submitted an application to the College for the current or upcoming terms; or
  - 2. is enrolled in, or registered in an academic program of the College, including classes for credit, noncredit classes, fee based training classes, and programs including but not limited to the Employee Training Institute, Community Education, and free workshops where teaching or training occurs, or;
  - 3. has met the conditions for part one (1) or two (2) above in the immediately preceding semester or intersession.
- B. Complainant: The term “complainant” is defined as any individual who files a formal complaint that a student has allegedly violated one or more sections of the Student Code of Conduct.
- C. Respondent: The term “respondent” is defined as a student against whom a complaint has been filed and who is alleged to have violated one or more sections of the Student Code of Conduct.
- D. Accused: The term “accused” is defined as a student against whom a complaint has been filed and who is accused by a complainant of having committed one, or more, of the following acts: sexual assault or rape; sexual harassment, sexual misconduct, sexual exploitation, stalking, dating violence, or domestic violence, each of which is a violation of one or more sections of the Student Code of Conduct.
- E. Notice: Whenever this Policy requires giving notice to any student, mailing such notice, to the mailing address most recently provided by the student or, if undeliverable at that address, to the student’s permanent address of record, shall constitute notice.
- F. Days: For purposes of this Policy, the term “days” means normal business days and shall not include Saturdays, Sundays, or administrative holidays.

- G. Student Conduct Committee: This committee consists of five members of the campus community who convene as needed to adjudicate cases of misconduct. See 5531.4 for additional information.

### **5531.3 Due Process**

#### **A. Referral of Cases:**

Any member of the campus community who has knowledge of alleged misconduct of students may bring the matter to the attention of the Office of the Dean of Students. The Dean (or designee) may require a written statement relative to the alleged misconduct. The Dean of Students in consultation with the Academic Senate will develop specific procedures to address alleged violations of academic and/or classroom misconduct. Referrals to the Office of the Dean of Students shall be made within thirty days following the discovery of the alleged misconduct. The CEO may grant exceptions to this timeline.

#### **B. Investigation and Notice to Student:**

Upon receiving notice of the alleged violation, the Dean of Students (or designee) may consider information acquired from a complainant and may augment that information through further investigation in order to determine if there is cause to believe that a violation may have occurred.

1. In cases involving an allegation of sexual assault it shall not be a valid excuse that the accused believed that the complainant affirmatively consented to the sexual activity if the accused knew or reasonably should have known that the complainant was unable to consent to the sexual activity under any of the following circumstances:
  - a. The complainant was asleep or unconscious.
  - b. The complainant was incapacitated due to the influence of drugs, alcohol, or medication, so that the complainant could not understand the fact, nature, or extent of the sexual activity.
  - c. The complainant was unable to communicate due to a mental or physical condition.
2. The District will investigate all complaints alleging sexual assault under the procedures for sexual harassment investigations described in AP 3435 (staff), and BP 5531 (student), regardless of whether a complaint is filed with local law enforcement.
3. All victims of rape, sexual assault, domestic violence, dating violence, or stalking, occurring on or off campus, shall be kept informed, through the Dean of Students Office, or the Office of Human Resources (depending on the status of the accused) of any ongoing investigation. Information shall include the status of any student or employee disciplinary proceedings or appeal; victims of domestic violence, dating violence, sexual assault, or stalking are required to maintain any such information in confidence, unless the alleged assailant has waived rights to confidentiality. The college will disclose to the alleged victim the final results of a disciplinary proceeding against the alleged perpetrator, regardless of whether the institution concluded that a violation was committed.
4. With the exceptions noted in Administrative Procedure 3515 (Reporting of Crimes - Confidentiality), the District shall maintain in confidence the identity of any alleged victim, witness, or third-party reporter of domestic violence, dating violence, sexual assault, or stalking, occurring on or off campus, as defined above, unless the alleged victim, witness, or third-party reporter specifically waives that right to

confidentiality. All inquiries from reporters or other media representatives about alleged domestic violence, dating violence, sexual assaults, or stalking, occurring on or off campus, shall be referred to the District's Public Information Office, which shall work with the Dean of Students or Vice President of Human Resources to assure that all confidentiality rights are maintained.

5. In cases in which the Dean (or designee) determines that there is not cause to believe that a violation may have occurred, the Dean (or designee) may decide that the case will not be pursued further. If the allegation concerned academic and/or classroom misconduct, the Dean (or designee) will contact the complainant to explain his or her reasoning. The complainant may appeal the decision to not pursue discipline, within 10 working days, to the Vice President of Instruction.
6. The Dean (or designee) may refer the matter to other campus and/or community resources.
7. The Dean (or designee) shall notify the student respondent in writing of the following:
  - a. the nature of the alleged conduct in question, including a brief statement of the factual basis of the charges; the time, date, and place it is alleged to have occurred; and the campus regulations allegedly violated;

- 1) Temporary Campus Restraining Order (TCRO):

In cases in which the Dean (or designee) has a reasonable suspicion to believe that an alleged violation of Policy 5529.2(D) and/or 5529.2(M) occurred, the Dean (or designee) may issue, in addition to the letter of notification, a Temporary Campus Restraining Order (TCRO). The TCRO shall prohibit named students from intentionally contacting, telephoning, texting, emailing, or otherwise disturbing the peace of others specifically named for a specified period of time. A TCRO shall not include a provision that terminates the respondent's student status as a student, nor shall it be construed as a finding of culpability on the part of any student respondent.

Nevertheless, violation of a term or condition of such an Order may be regarded as actionable misconduct and may subject the student respondent to disciplinary action without regard to the outcome of the case that occasioned the issuance of the TCRO. A copy of the TCRO will be provided to the alleged victim.

- 2) a copy of the student conduct procedures; and
- 3) that an interview with the Dean (or designee) must be scheduled within seven (7) days for the purpose of an initial hearing. The student respondent may waive the right to an initial hearing and request that the matter be referred directly to the Student Conduct Committee for a hearing.

### C. Placement and Notice of Hold:

In the event that the student respondent does not contact the Office of the Dean of Students within the seven (7) day period, or fails to keep any scheduled appointment, the Dean (or designee) may then place a Hold on the student respondent's College records and notify the student respondent that this action has been taken. Notification may be in the form of pre-notification by way of the summons letter which shall indicate a date certain by which the student respondent, must reply or keep an appointment in order to avoid the hold being placed on the student respondent's College records; or, in certain cases, notification of the placement of the

hold shall be made at the time the summons and notice of allegations are mailed to the student respondent. Such Hold will be removed only when the student respondent either appears at the Office of the Dean of Students (or designee) for a scheduled interview, or requests in writing that the case be referred directly to the Student Conduct Committee for a hearing.

D. Initial hearing with the Dean:

The Dean of Students (or designee) shall, at the initial hearing:

1. determine that the student respondent has received a copy of these procedures;
2. discuss confidentiality; inform the student respondent that the content of this and all subsequent communications with the Office regarding information not relevant to the case shall, insofar as allowed by law, be treated confidentially, unless such confidentiality is waived by the student; and that information relevant to the case may be divulged to those who have a legitimate educational interest;
3. describe to the student respondent as completely as possible the allegation, and the College policies allegedly violated, hear the student respondent's defense to such charges and;
4. provide the student respondent with an opportunity to inspect all documents relevant to the case which are in the possession of the Dean at the time of the hearing, and all such documents arriving after the initial hearing but before disposition of the case by the Dean of Students (or designee);
5. provide the student respondent with copies of the documents relevant to the case, at the student respondent's request, and;
6. counsel the student respondent regarding the campus discipline process as appropriate.

E. Right of Student to be Accompanied at Initial Hearing

1. If the student respondent is accompanied by a person or persons (not affiliated with the allegation) of their choice at the initial hearing with the Dean (or designee), it shall be recognized that the student respondent has provided implied consent for the presence of a third-party person at the initial hearing.
2. At the initial hearing, the student respondent must represent him or herself. Any person accompanying the student respondent must not address the Dean (or designee)
3. The Dean (or designee) may excuse any person accompanying the student respondent, from the initial hearing, if the Dean (or designee) deems that person's presence is being disruptive to the hearing process.

F. Disposition by the Dean of Students (or designee):

After meeting with the student respondent, the Dean (or designee) may take one of several actions:

1. Insufficient Evidence:

If the Dean (or designee) concludes that there is insufficient evidence to sustain a finding of culpability, he or she may decide not to refer the case to the Student Conduct Committee. The complainant may still attempt to resolve the matter through campus and/or community resources.

In the cases of alleged violations of classroom and/or academic misconduct the Dean (or designee) will notify the complainant of this outcome (if allowed by law). The complainant may appeal this decision, within ten working days, to the Vice President of Academic Affairs.

## 2. Informal Agreement of Resolution:

In cases in which the Dean (or designee) determines that an Informal Agreement of Resolution is appropriate, the student respondent will be informed that this Resolution, while not a part of the student respondent permanent record, is binding. If the student respondent fails to abide by the Informal Agreement of Resolution, such failure will be regarded as actionable misconduct, under District Policy 5529.2(L), and may subject the student respondent to disciplinary action by the College.

Each Informal Agreement of Resolution shall be regarded as binding within the College and may include:

- a. Direction by the Dean (or designee) to the student respondent to refrain from the behavior(s) described by the Dean (or designee) and/or restrictions regarding contact with others involved in the case.
  - 1) Required participation by the student respondent in educational programs and/or reconciliation processes, including mediation.
  - 2) Required participation by the student respondent as an unpaid volunteer in activities that serve the College and/or community.
  - 3) Retention of the case file and the Informal Agreement of Resolution in the Office of the Dean of Students for two (2) years from the date appearing on the Agreement. During those two (2) years, should the Dean (or designee) have a reasonable suspicion to believe that the student respondent has engaged in misconduct related in nature to the conduct which occasioned the Agreement, both cases may be subject to College disciplinary action.

## 3. Formal Disciplinary Action:

- a. If the student respondent does not admit culpability, and if the Dean (or designee) concludes that an Informal Agreement of Resolution is not appropriate, and that there is sufficient evidence such that a student Conduct Committee could find, by a preponderance of the evidence, that the student respondent has violated College policy, the Dean (or designee) shall refer the case to the Student Conduct Committee for a hearing.
- b. If the Dean (or designee) determines at the initial hearing to refer the case to the Student Conduct Committee for a hearing, the Dean (or designee) shall inform the respondent, at the conclusion of the initial hearing, of the range of sanctions the Student Conduct Committee may consider for the alleged violation by the respondent, based on sanctions imposed in similar cases.
- c. If the student respondent does admit culpability, and if the Dean (or designee) concludes that there is sufficient evidence to sustain a finding of culpability, the Dean (or designee) may impose, or impose and suspend, one or more of the sanctions listed in Santa Clarity Community College District Policy

5530 (excluding expulsion); moreover, the imposition of any sanction may be effective retroactively. Regardless of the action taken, the Dean (or designee) shall confirm his or her disposition of the case in a written notice mailed to the student respondent within ten (10) days of the action.

- 1) In cases involving an allegation of sexual assault it shall not be a valid excuse to alleged lack of affirmative consent that the accused believed that the complainant consented to the sexual activity under either of the following circumstances:
  - i. The accused's belief in affirmative consent arose from the intoxication or recklessness of the accused.
  - ii. The accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain whether the complainant affirmatively consented.

**G. Appeal of the Sanction Imposed by the Dean:**

1. If the Dean (or designee) imposes a sanction of Suspension or recommends Expulsion, the student respondent may submit a written appeal of the imposed Suspension or Expulsion to the CEO within five (5) days of the date appearing on the Dean's (or designee's) written confirmation of his or her action. The imposition of a sanction of Suspension may be withheld during such appeal. The CEO's review of such appeal shall be in accordance with the provisions set forth in Section 5531.5, The CEO, below. The CEO's decision is final.
2. **Withdrawal of Consent to Remain on Campus:** The Dean (or designee) may notify a respondent that, for whom there is a reasonable belief that he/she may willfully disrupt the orderly operation of the campus, consent to remain on campus has been withdrawn. If the respondent is on campus at the time, he/she must promptly leave or be escorted off campus. If consent is withdrawn by the Dean (or designee), a written report must be promptly made to the CEO.

The respondent from whom consent has been withdrawn may submit a written request for a hearing on the withdrawal within the period of the withdrawal. The request shall be granted not later than seven days from the date of receipt of the request. The hearing will be conducted in accordance with the same procedure relating to interim suspensions except the hearing will be held under the authority of a student conduct dean other than the dean who imposed the withdrawal of consent to remain on campus. (Board Policy 5530.A.10)

Any respondent to whom consent to remain on campus has been withdrawn who knowingly reenters the campus during the period in which consent to remain on campus has been withdrawn, except to attend a hearing on the appeal of the withdrawal of consent to remain on campus, is subject to arrest under Penal Code Section 626.4.

**5531.4 The Student Conduct Committee**

- A. The Student Conduct Committee shall provide a hearing for all cases referred to it under this Policy.
- B. The Student Conduct Committee shall be comprised of five members of the campus community. Two full-time faculty members, one of which shall act as chair; one classified staff member; and two students. Three members must be present to constitute a quorum. A classified staff member shall act as the Hearing Coordinator and provide appropriate administrative support to the process. Alternate members from each constituent group named above shall be identified and trained.

- C. It is the intention of this Policy that hearings be set as soon as reasonably possible after referral to the Student Conduct Committee.
- D. Hearings shall be held in accordance with generally accepted standards of procedural due process, including, but not limited to, the opportunity to present evidence, and the right to examine and cross-examine witnesses in an orderly manner. The student respondent may be advised by any person of the student respondent's choice, at the student respondent's own expense; however, the student respondent must represent him or herself. The Committee Chair may grant exceptions (for example pending criminal charges against the student respondent). The Committee Chair shall rule on all questions of procedure. Evidence may be received of the sort upon which responsible persons are accustomed to rely in the conduct of serious affairs, and is not restricted to evidence admissible under the strict rules of evidence of a court of law.
- E. When the hearing involves an allegation of rape, or other forms of sexual assault, evidence of the complainant's past sexual history, including opinion evidence, reputation evidence, and evidence of specific instances of the complainant's sexual conduct, shall not be admissible by the accused student unless the Committee Chair makes a specific finding of relevance after an offer of proof by the accused student. Under no circumstances is past sexual history admissible to prove consent. The offer of proof must be made and resolved by the panel before the complainant testifies.
- F. No inference shall be drawn from the silence of the student respondent. The standard of proof to be applied in these hearings is that of a preponderance of the evidence. Hearings shall be recorded and the student respondent shall receive, upon request, a copy of the record without charge. The record may be an audio-tape recording of the hearing.
- G. The hearing shall be closed to spectators unless a student, who is a respondent to the allegation, specifically requests a public hearing.
- H. The Committee Chair has the right to exclude spectators from the hearing room if deemed necessary for the quiet or secure conduct of the hearing. When the hearing involves an allegation of rape or other forms of sexual assault, the hearing shall be closed to spectators except for the following:
  1. The complainant shall be entitled, for support, to have up to two persons of the complainant's choice accompany the complainant to the hearing. A support person may be called as witness, and the fact that he or she is to act as a witness shall not preclude that person's attendance throughout the entire hearing. If a support person is also a witness, the Committee Chair may require him or her to testify before the complainant. Neither of these persons shall be entitled to represent or defend the complainant. Similar rights shall be afforded the accused student.
  2. The complainant shall have the right to be present during the entire hearing, notwithstanding the fact that the complainant is to be called as a witness.
  3. An individual who participates as a complainant or witness in an investigation of sexual assault, domestic violence, dating violence, or stalking will not be subject to disciplinary sanctions for a violation of the institution's student conduct policy at or near the time of the incident, unless the institution determines that the violation was egregious, including, but not limited to, an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic dishonesty.

I. Responsibility for Presentation of Cases:

1. At the hearing, the student respondent must represent him or herself (exceptions may be granted by the Committee Chair); however he or she may receive advice, from any person at the student respondent's own expense. An advisor is not allowed to address the Committee directly and must conduct him or herself in an appropriate manner.
1. The Committee Chair may excuse any advisor for the student respondent from a hearing, if the Chair deems the advisor is being disruptive to the hearing process.
2. If the student respondent wishes the Hearing Coordinator to direct communications concerning the case to his or her advisor, as well as to him or herself, he or she must provide the Hearing Coordinator with such a request, including the name and address of his or her advisor, in writing.
3. The College's representative shall be the Dean of Students or the Dean's designee. The Dean (or designee) shall present the case to the Committee; provide training to the Committee regarding due process; and act as a moderator during the hearing. The Dean (or designee) may consult with legal counsel.
4. Committee members may ask questions of the student respondent witness(es), and other involved individuals in the case, until they are satisfied they have received all the relevant facts of the matter.

J. Continuing Informal Resolution:

Until the Student Conduct Committee makes its report to the CEO, any agreement between the student respondent and the Dean of Students (or designee) as to the disposition of the matter shall bind all parties and terminate all proceedings.

K. Reports to the CEO:

Within fifteen (15) days after the conclusion of a hearing, the Committee Chair shall submit a report advising the CEO of:

1. the Committee's specific finding of fact;
  2. whether, in the opinion of a majority of the Committee the student respondent has violated one or more College policies; and
  3. a recommendation of sanction, provided that prior to recommending any sanction, the Committee is briefed by the Dean of Students (or designee) regarding sanctions imposed in similar cases, and any previous cases of misconduct by the student respondent on file with the Office of the Dean of Students; and provided further that the Committee indicate the rationale for such recommendation.
- L. The CEO may grant an extension of time for submission of the report for good cause shown and upon such terms as shall avoid undue prejudice to the student respondent. Any member of the Committee may submit a minority report to the CEO.
- M. A copy of all reports required to be submitted to the CEO by this Policy, including any minority reports, shall be sent to the student respondent, the Dean of Students (or designee), and the complainant (if allowed by law), when transmitted to the CEO.

- N. The student respondent shall have ten (10) days from the date appearing on the Committee report in which to submit to the CEO any written argument supporting the student respondent's position.
- O. If a student does not meet with the Dean (or designee) and/or does not appear at the hearing, or has withdrawn from the College while subject to pending disciplinary action, the case may proceed to disposition without the student respondent's participation.

### **5531.5 The CEO**

#### **A. Decision by the CEO:**

The final decision regarding the case shall be made by the CEO except in cases which:

- 1. are resolved by the Dean of Students (or designee), and no written appeal is made by the student respondent;
- 2. include a recommendation for expulsion.

#### **B. Basis for Decision:**

The CEO shall base his or her decision upon:

- 1. the report submitted by the Student Conduct Committee;
- 2. counsel solicited from the Dean (or designee), regarding sanctions imposed in similar cases, and any previous cases of misconduct by the student respondent on file with the Office of the Dean of Students.

#### **C. Sanctions:**

The CEO may decide to impose, or impose and suspend, one or more of the sanctions listed in Section 5530, with the exception of expulsion (discussed below). The CEO is not limited to those sanctions imposed by the Dean, or to those recommended by the Student Conduct Committee, even though such decision may result in a decrease of the student respondent's penalty; moreover, the imposition of any sanction may be effective retroactively.

#### **D. Recommendation for Expulsion:**

- 1. The CEO or designee, shall, in writing, by first class mail, notify the student respondent, or in the case of a minor, his or her parent or guardian, of the intent of the Board to hear the matter of his or her expulsion. Unless the student respondent, or, in the case of a minor, his or her parent or guardian, request in writing, within 48 hours after receipt of such written notice of intention, that the Board consider the matter in a public meeting, then the hearing to consider such matters shall be conducted by the Board in closed session, without the student respondent and his or her parent or counsel present. If such written request is served upon the CEO, the meeting shall be public, except that any discussion at such meeting that might be in conflict with the right to privacy of any student, other than the student respondent requesting the public meeting, or on behalf of whom such meeting is requested, or the right of privacy of any employee, then the meeting shall be in closed session, without the student respondent, his or her parent or counsel present. Whether the matter is considered in a closed session or in a public

meeting, the final action of the Board shall be taken in a public meeting and the result of such action shall be a public record (Education Code 72122).

2. If the student respondent is being represented by counsel in his or her appeal to the Board of Trustees, the student respondent's counsel can only address the Board in open session.

E. Appeal:

1. The student respondent may appeal the Student Conduct Committee's or Dean's (or designee's) decision to recommend expulsion to the Board of Trustees by filing an appeal with the CEO. Any such appeal shall be submitted in writing within five (5) days following receipt of the Committee's or Dean's (or designee's) decision and shall specifically state the grounds for appeal. The appeal shall be based only on the disciplinary record and the Committee's or Dean's (or designee's) decision.
2. The appeal and the recommended disciplinary action shall be consolidated and the Board shall consider the action as one.
3. Withdrawal of Consent to Remain on Campus: The CEO (or designee) may notify a respondent that, for whom there is a reasonable belief that he/she may willfully disrupt the orderly operation of the campus, consent to remain on campus has been withdrawn. If the respondent is on campus at the time, he/she must promptly leave or be escorted off campus.

Any respondent as to whom consent to remain on campus has been withdrawn who knowingly reenters the campus during the period in which consent to remain on campus has been withdrawn, except to attend a hearing on the appeal of the withdrawal of consent to remain on campus, is subject to arrest under Penal Code Section 626.4.

F. CEO:

Not later than twenty (20) days after the date appearing on the written appeal of the student respondent; or the report of the Student Conduct Committee, if any, whichever is latest, written notification of the CEO's decision shall be delivered to:

1. the student respondent;
2. the Chair of the Student Conduct Committee, if the Committee heard or reviewed the case and made a report to the CEO, and
3. the Office of the Dean of Students.
4. The CEO may also notify other parties of his or her decision. The CEO may direct the Dean of Students (or designee) to notify others, if there is an institutional interest in doing so, and if such parties are authorized to receive such information under the "Santa Clarita Community College District Policy on the Disclosure of Information from Student Records."

**5531.6 Disciplinary Files**

- A. The College considers disciplinary files generated by disciplinary due process to be confidential.
- B. Such disciplinary files will be kept separate from other, non-disciplinary files, retained by the College.

- C. With the exception of cases ending in Expulsion from the College, disciplinary files shall be retained for four (4) years following the conclusion of the sanction. At such time, both electronic disciplinary files and paper disciplinary files will be destroyed.
  - 1. Disciplinary files for cases that result in the expulsion of a student will be kept indefinitely.
- D. The Dean of Students (or designee) may grant exceptions to this timeline.

Approved by the Board of Trustees: June 27, 2018

Next Review Date: Spring, 2024