

CCLC Update 36 – this procedure was updated to remove a use note in the section addressing appeals and update the appeal procedures to make it more streamlined

**AP 5530                      Student Right ~~,and~~ Grievances, ~~and~~  
Due Process**

Reference:                      ***Title IX, Education Amendments of 1972; Education Code  
Section 76224(a); 34 Code of Federal Regulations Parts 106.1  
et seq.; ACCJC Accreditation Eligibility Requirement 20;  
ACCJC Accreditation Standard IV.D***

Date Issued:                      April 15, 2009                      Revised:  
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## **Introduction**

The educational philosophy of the Grossmont-Cuyamaca Community College District set forth by board policy BP 1300 Educational Philosophy states that “The colleges recognize the worth of the individual and the fact that individual needs, interests, and capacities vary greatly.” With acceptance of this principle comes the recognition that divergent viewpoints may result and that a process by which these viewpoints can be aired and resolved must be established.

The purpose of this document is to provide a prompt and equitable means for resolving student grievances. In the pursuit of academic goals, the student should be free of unfair or improper action by any member of the campus community. 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. It is the responsibility of the student to submit proof of alleged unfair or improper action. 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 Harassments Complaints and Investigations) for sexual misconduct complaints under Title IX;
- Financial aid [unless the District’s financial aid policy contains an appeal procedure]
- 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 Student and Grievance ~~and Due Process~~ Procedure does not apply to:

- The challenge process for prerequisites, corequisites, advisories, and limitations on enrollment; an appeal of residence decision determination; or the determination of eligibility, disqualification or reinstatement of Financial Aid. The appeal procedure for eligibility, disqualification, and reinstatement of financial aid may be obtained in the Financial Aid Office. Information about other procedures is listed in the schedule of

classes, the college catalog, or may be obtained from the Chief Student Services Officer or directed to the administrator in charge of the specific area of concern.

- Alleged violations of sexual harassment policies, actions dealing with student discipline, alleged discrimination on the basis of ethnic group identification, religion, age, gender, color, sexual orientation, physical or mental disability should be directed to the Dean of Student Affairs.
- Police citations (i.e., “tickets”) complaints regarding citations must be directed to the Campus and Parking Services Office.
- If it is reasonable to conclude that, if substantiated, discipline of an employee may follow from a violation, such grievance is not subject to this process. Allegations of this nature will be directed to the appropriate college administrator.

If the grievance is predicated on an alleged unlawful discrimination on the basis of ethnic group identification, religion, age, gender, color, sexual orientation, physical or mental disability, a complaint may be filed with the:

Vice Chancellor of Human Resources  
 District Office  
 Grossmont-Cuyamaca Community College District  
 8800 Grossmont College Drive  
 El Cajon, CA 92020  
 (619) 644-7572

Information about grievance procedures and a copy of this document should be available to grievant(s) and/or the student respondent(s) upon request.

### Definition of Student Grievance Terms

**Academic Senate:** The elected representative body of the faculty at each College of the District.

**Administrator:** The College President or other person or persons designated by him or her.

**Dean of Student Affairs:** The Dean of Student Affairs at each college of the District.

**Associated Student Government:** The elected student representative body at each college of the District.

**Chief Student Services Officer:** The Vice Presidents of Student Services at each College of the District.

**College President or Designee:** The Chief Executive Officer (CEO) at each College of the District or an Administrator selected by the CEO to represent him or her in matters of Student Conduct.

**-Days:** Days during which College is in session and regular classes are held, including summer and intersession days, and excluding Saturdays and Sundays, unless otherwise specified in the procedures.

**Decision:** The final outcome of the Grievance Council. This includes tie votes or no decision.

**District or GCCCD:** *The Grossmont-Cuyamaca Community College District (GCCCD), including all Colleges, programs and offerings.*

**Formal Grievance Hearing Committee:** The Formal Grievance Hearing Committee is appointed by the College President and shall consist of two (2) students, two (2) faculty members, and one (1) college administrator, supervisor or staff member.

**Grievance Council:** The Grievance Council is composed of the Chief Student Services Officer, the Vice President of Instruction and the Chief Business Officer of the college or their designees.

**Grievant:** A grievant is a person currently enrolled, or a person who has filed an application for admission to the college, or a former student of the District, including both in-person and online. 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) and must file their grievance within one (1) year of the date the grade was awarded.

**Instructor:** Any academic employee of the District who is the instructor of record for a class in which a student is enrolled, or a counselor who is providing or has provided services to the student, or other academic employees who provide services related to the student's educational program.

**Party:** The student grievant or any persons alleged to have been responsible for the student's alleged grievance, together with their representatives. Party shall not include the Formal Grievance Hearing Committee, members of the Grievance Council, or the Dean of Student Affairs.

**Respondent:** Any party who is a student and who is claimed by a grievant to be responsible for the alleged grievance.

**Student:** A currently enrolled student, a person who has filed an application for admission to, or a former student at any college within the District, including both in-person and online. 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).

### Informal Resolution

All parties involved should be encouraged to seek an informal remedy. Informal meetings and discussion between persons directly involved in a grievance are essential at the outset of the dispute and should be encouraged at all stages. An equitable solution should be sought before persons directly involved in the case have assumed official or public positions that might tend to polarize the dispute and render a solution more difficult.

In an effort to resolve the matter in an informal manner, the student may, if appropriate, schedule a meeting with the person with whom the student has the grievance, schedule a

meeting with the person's immediate supervisor, and/or schedule a meeting with the appropriate college administrator.

The College President shall appoint the Dean, Student Affairs to assist students in seeking resolution by informal means. The role of the Dean of Student Affairs is that of a facilitator of the grievance process, and not that of an advocate for either the Grievant(s) or the Respondent(s). The Dean, Student Affairs and the student may also seek the assistance of the Associated Student Organization in attempting to resolve a grievance informally.

**Request for Formal Grievance Hearing** If the student believes the issue has not been resolved satisfactorily, the student may obtain a Written Statement of Grievance form from the Office of Student Affairs, specifying the time, place, nature of the complaint, the specific policy or regulation alleged to have been violated, if any, and the remedy or correction requested. This Statement shall be submitted to the Dean of Student Affairs, within thirty (30) days of the incident or thirty (30) days after the student learns of the basis for the grievance, whichever is later, but not to exceed one (1) year of the occurrence. 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) and must file their grievance within one (1) year of the date the grade was awarded.

Following submission of the Written Statement of Grievance, the student may, if appropriate, schedule a meeting with the Dean of Student Affairs to explore student rights and responsibilities and receive assistance with an informal resolution.

- During the informal resolution stage of the grievance process, the Dean of Student Affairs shall facilitate informal meetings and discussions that may lead to a resolution of the grievance.
- The Dean of Student Affairs may gather information, communicate with all parties and attempt to mediate an informal resolution.

At the end of fifteen (15) days following the receipt of the Written Statement of Grievance by the Dean of Student Affairs, if there is no informal resolution of the complaint, the student(s) shall have the right to request a Formal Grievance Hearing.

The request for a Formal Grievance Hearing shall be made in writing to the Dean of Student Affairs within five (5) days following the conclusion of the information resolution process. If the Grievant fails to exercise his/her due process rights with five (5) days of the conclusion of the informal process, no further action shall be taken.

Following receipt of the Formal Grievance Hearing Form from the Grievant, upon request from either Party, the Grievant(s) or Respondent(s), the Dean of Student Affairs shall meet with the requesting Party to outline their rights and responsibilities.

### **Formal Grievance Hearing Committee**

The College President shall establish annually a standing panel from which one or more Formal Grievance Hearing Committees may be appointed. The panel shall consist of a minimum of:

- Five (5) students recommended by the Associated Student Government;
- Five (5) faculty members recommended by the Academic Senate;

- Five (5) administrators, supervisors or staff selected by the College President.

The College President shall appoint a Formal Grievance Hearing committee from the standing panel. The College President shall ensure that these committee members have no possible conflict of interest in hearing the grievance. The committee shall include two (2) students, two (2) faculty members, and one (1) College administrator, supervisor or staff member selected from the panel described above.

The Formal Grievance Hearing Committee shall select a chairperson from among its members.

Once a Formal Grievance Hearing has commenced, only those committee members present throughout the Hearing may vote on the recommendation.

No person shall serve as a member of the Formal Grievance Hearing Committee if that person has been personally involved in any matter giving rise to the grievance, has made any public statement on the matters at issue, or could otherwise not act in a neutral manner. The grievant(s) or the respondent(s) may challenge for cause any member of the Formal Grievance Hearing Committee prior to the beginning of the hearing by addressing a challenge in writing, to the College President, who shall determine whether cause for disqualification has been shown. If the College President believes that sufficient grounds for removal of a member of the Formal Grievance Hearing Committee have been presented, the College President shall remove the challenged member or members and replace them with another member or members from the standing panel.

#### **Formal Grievance Hearing Committee Determination of Standing**

Within ten (10) days following receipt of the Formal Grievance Hearing Request, the Formal Grievance Hearing Committee shall meet to select a chairperson and to determine if the Formal Grievance Hearing Request fulfills all of the following requirements:

- The request contains facts/documentation which, if true, would constitute a grievance;
- The grievant is a student as defined in these procedures, which includes applicants and former students;
- The grievant is personally and directly affected by the alleged grievance;
- The grievant conformed with the grievance procedures and the grievance was filed in a timely manner;
- The grievance is not clearly frivolous or without foundation, or not clearly filed for purposes of harassment.

If the Formal Grievance Hearing Committee rejects the request for a Formal Grievance Hearing, the grievant and the Dean of Student Affairs shall be notified in writing, within five (5) days, by the committee's chairperson. The specific reason(s) for rejection and the appeal process outlined in this document shall be included in this notification.

If the grievant(s) is dissatisfied with the decision of the Formal Grievance Hearing Committee not to grant a Formal Grievance Hearing, a written appeal may be filed with the Grievance Council via the Dean of Student Affairs within five (5) days after receipt of the Formal Grievance Hearing Committee's decision. The Grievance Council's decision on the appeal is final.

If the request for a Formal Grievance Hearing satisfies all of the requirements listed above, the committee Chairperson shall notify the Grievant and the Dean of Student Affairs, in writing, within five (5) days.

The Dean of Student Affairs shall schedule a Formal Grievance Hearing which shall commence within twenty (20) days following the decision to grant a Formal Grievance Hearing. All parties to the grievance shall be given no less than five (5) days notice of the date, time and place of the hearing.

### **Hearing Preparation**

The Dean of Student Affairs shall be responsible for making the necessary arrangements for the Hearing. Arrangements shall include scheduling a room, providing for a tape recorder, providing notice to the parties, notifying members of the Grievance Hearing Committee, and any other arrangements deemed necessary.

Parties requesting accommodations in accordance with the Americans with Disabilities Act of 2008 or Section 504 of the Rehabilitation Act (1973) may do so by contacting the Dean of Student Affairs in writing at least five (5) days in advance of the needed accommodation.

During the Formal Grievance Hearing stage of the grievance process, the Dean of Student Affairs shall coordinate the preparation and shall prepare the chairperson on conduct of the hearing, including providing in-service training to committee members on hearing procedures and operations. The Dean of Student Affairs shall sit with the Formal Grievance Hearing Committee but shall not serve as a member or vote. The Dean of Student Affairs shall ensure that the entire grievance process is conducted in an orderly, fair, and respectful manner.

***Right to Representation:*** The Grievant(s) or the Respondent(s) may represent himself or herself or may be represented by another person, except that he or she shall not be represented by an attorney or a person acting as an attorney, unless, in the judgment of the Grievance Hearing Committee, complex legal issues are involved. In such case, the Party requesting legal representation shall provide the name and address of the attorney to the Dean of Student Affairs no later than five (5) 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 Grievance Hearing Committee may also request legal assistance through the College President. 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.

The Dean of Student Affairs shall have the authority to exclude from the hearing any individuals who fail to conduct themselves in an orderly, fair, and respectful manner.

### **Conduct of the Hearing**

***Opening:*** The committee chairperson shall call the hearing to order, introduce the participants, and announce the purpose of the hearing

***Review of Alleged Grievance:*** The chairperson shall distribute copies of the Formal Grievance Hearing Form submitted by the Grievant to the members of the Grievance Hearing Committee.

***Burden of Proof:*** The burden shall be upon the grievant to prove by a preponderance of evidence that the facts alleged are true.

**Arguments:** Unless the Grievance Hearing Committee determines to proceed otherwise, beginning with the Grievant(s), each party to the grievance shall be permitted to make or waive an opening statement. Thereafter, the Grievant(s) shall make the first presentation, followed by the Respondent(s). The Grievant(s) may present rebuttal evidence after the Respondent(s)' evidence. The burden shall be on the Grievant(s) to prove by a preponderance of evidence that the facts alleged are true and that a grievance has been established as specified above.

**Evidence:** Formal rules of evidence shall not apply. All relevant information is admissible, including but not limited to testimony of witnesses, physical objects, police reports, photographs, copies of documents, and signed and dated declarations of witnesses shown to be unavailable to attend the hearing. The Grievant(s) and the Respondent(s) have the right to question all witnesses and to review all documents presented to the Formal Grievance Hearing Committee.

**Exclusion of Witnesses:** Hearings shall be closed and confidential. Only persons participating in the hearing shall be present during the hearing. All witnesses shall be excluded except when testifying. Both Parties shall be entitled to call witnesses presented by the other. Either party may recall a witness, who again may be questioned by both parties and the committee. A member of the Formal Grievance Hearing Committee may ask questions at any time upon recognition by the chairperson.

**Conclusion:** First the Grievant(s), and then the Respondent(s), shall be afforded the opportunity to make or waive a final statement.

**Formal Grievance Committee Decision:** Upon conclusion of the Hearing, the Formal Grievance Hearing Committee shall retire to deliberate with only members of the Grievance Committee present. Only those committee members present throughout the entire hearing may vote on the decision. The Formal Grievance Hearing Committee's deliberations shall not be tape-recorded and shall be confidential and closed to all Parties. With permission of the Grievance Hearing Committee, the Dean of Student Affairs and/or legal counsel retained on behalf of the Committee may be present during deliberations to assist in procedural matters.

The Formal Grievance Hearing Committee shall meet and consider the relevance and weight of the testimony and evidence presented. This committee shall reach a decision only upon the record of the hearing and shall not consider matters outside of that record.

Within five (5) days following the conclusion of the hearing, this committee shall issue a written recommendation that includes a statement of reasons for its conclusions. The committee's recommendation shall be forwarded to the Grievance Council through the Chief Student Services Officer with copies to the Grievant(s), Respondent(s) and Dean of Student Affairs.

**Tape-Recording:** The Dean of Student Affairs shall be responsible for tape recording the hearing and arranging for safe storage of the grievance file, including tape(s) and documents, for a period of no less than four (4) years. The hearing shall be tape-recorded in accordance with the following procedures:

- All oral testimony shall be tape-recorded. If a person called upon to give oral testimony refuses to consent to being recorded, they may not testify at the hearing.
- At the beginning of every hearing, all parties present for the hearing shall orally identify themselves by name for the tape-recording.

- The committee chairperson shall instruct all parties present for the hearing to identify themselves when speaking and instruct all present that only one person is to speak at a time so the tape-recording will be understandable.
- Only one tape-recorder shall be allowed at the hearing. No other recording device shall be allowed.
- No witness who refuses to be recorded may be permitted to give testimony.

**Absence of the Party:** If either Party, Grievant(s) or Respondent(s), do not appear, and no satisfactory explanation for the absence is made at the earliest opportunity, or if either Party leaves the Hearing before its conclusion, the Hearing shall proceed without the student, and the Formal Grievance Hearing Committee shall reach a decision based on the information presented.

### **Grievance Council**

The Grievance Council shall be composed of the Chief Student Services Officer, the Vice President of Instruction, and the Chief Business Officer of the College or designees.

Upon receipt of the Formal Grievance Hearing Committee's recommendation, the Chief Student Services Officer shall call a meeting of the Grievance Council.

The Grievance Council shall consider the committee's recommendation and any materials pertinent to the grievance, but shall not consider matters outside of the record. The Grievance Council shall render a written decision to the grievant(s) and the respondent(s) within five (5) days of receipt of the Formal Grievance Hearing Committee's recommendation.

### **Appeal**

If either Party is dissatisfied with a Grievance Council's decision, a written appeal may be filed with the College President within five (5) days of receipt of the Grievance Council's decision. If the College President is a party to the grievance, the appeal will be submitted directly to the District Chancellor.

Within five (5) days, the Grievance Council, or the College President (or District Chancellor if the President is a party to the grievance) shall send copies of the appeal to each party.

The College President (or the District Chancellor if the President is a party to the grievance), after reviewing the record of the Formal Grievance Hearing Committee, shall make a decision on the appeal and notify the parties in writing within five (5) days.

The College President's (or the District Chancellor's if the College President is a party to the grievance) decision shall be in writing and shall include a statement of reasons for the decision. The College President's (or District Chancellor's) decision shall be final.

The decision of the Grievance Council is final. Further complaints may be submitted to the California Community College State Chancellor's Office (<http://californiacommunitycolleges.cccco.edu/ComplaintsForm.aspx>).

## General Provisions

The facts of any Grievance action and the reasons shall be recorded on the student's records subject to access, review and comment by the student as authorized by the Family Education Rights and Privacy Act (20 USC Section 2332g) and Education Code Sections 76200 *Legislative Intent* through Section 76246. All access or release of such records to members of the public shall also be in accordance with applicable State and Federal laws.

The grievance file, including tapes and all documents, shall be retained in a secure location on campus for a period of four (4) years. The Grievant(s) and the Respondent(s) may have access, upon request, to the files and tapes through the Dean of Student Affairs. The individual making the request shall pay the costs of any copies requested.

The records shall be available only to officers or employees of the GCCCD and only used when necessary to represent the College or District in litigation or other legal or administrative proceedings.

Any specified time limits stated in these procedures may be shortened or lengthened by mutual concurrence of all parties.

Technical departures from these procedures and errors in its application shall not constitute grounds to invalidate action against a student unless, in the opinion of the College President or Designee, the technical departure or error prevented a fair determination of the issue.