
Kern Community College District
Administrative Procedures
Chapter 5 – Student Services

AP 5530 Student Rights and Grievances

References:

Education Code Section 76224 subdivision (a);
ACCJC Accreditation Eligibility Requirement 20;
ACCJC Accreditation Standard IV.D

Note: This procedure is legally advised

In the pursuit of their educational goals, students should be free of unfair and improper action by any member of the academic community. A grievance may be initiated by students when they believe that they have been subject to unjust action or denied their rights as stipulated in published district regulations, state laws, or federal laws. Such action may be initiated by students against a faculty, staff member, or administrator.

This procedure provides a prompt and equitable means of resolving student grievances.

Grievance: A claim by any student who reasonably believes a college decision or action has adversely affected his/her/their status, rights, or privileges as a student. A grievance includes, but is not limited to, claims regarding:

- Course grades, to the extent permitted by Education Code Section 76224 subdivision (a), which states: "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; or
- The exercise of rights of free expression protected by state and federal constitutions and Education Code Section 76120.

A grievance is not:

- Student disciplinary actions addressed in BP/AP 5520 Policies and Administrative Procedures.
- Police citations (i.e. "tickets"). Complaints about citations must be directed to the county courthouse as with any traffic violation.

Grievant – A student who has filed a grievance.

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 members of 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 subdivision (a).

Respondent – Any person the grievant claims to be responsible for the alleged grievance.

Day – Unless otherwise provided, "day" shall mean any day in which the college is engaged in regular operations, excluding weekends, holidays, or closure days

Informal Resolution – Each student who has a grievance shall make a reasonable attempt to resolve the matter on an informal basis prior to requesting a grievance hearing and shall attempt to resolve their grievance with the person whom the student has the grievance, that person's immediate supervisor, or the college administration.

The College President may 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 Government in attempting to informally resolve a grievance.

Informal meetings and discussions 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 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 they have a grievance shall file a Statement of Grievance with the Grievance Officer within fourteen (14) calendar days of the incident upon which the grievance is based, or fourteen (14) calendar days after the student learns of the basis for the grievance, whichever is later. The Statement of Grievance must be filed regardless of having already initiated efforts at an informal resolution if the student wishes to make the grievance official. Within seven (7) calendar days following receipt of the Statement of Grievance Form, the Grievance Officer shall advise the student of his/her/their rights and responsibilities under these procedures, and assist the student, if necessary, in the final preparation of the Statement of Grievance form.

Within fourteen (14) calendar days following the student's first meeting with the Grievance

Officer, if an informal resolution of the complaint is not achieved to the satisfaction of the grievant, 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 academic year, establish a standing panel of members of the college community, a minimum of three (3) students, three (3) faculty members, three (3) classified members, and three (3) administrators, 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 Government, California School Employees Association, and the Academic Senate, who shall each submit two (2) names to the College President or designee for inclusion on the panel. A Grievance Hearing Committee shall Be comprised of three members, each member representing a different constituency group (student, faculty member, college administrator or classified member) selected from the panel described above.

A person shall not serve as a member of a Grievance Hearing Committee if that individual 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, believes that sufficient grounds for removal of a member of the committee has been presented, the College President or designee, shall remove the challenged member(s) and substitute a member(s) from the panel described above. This determination is subject to appeal as defined below.

The Grievance Officer shall be present with the Grievance Hearing Committee during the hearing but shall not serve as a member of the Hearing Committee nor cast a vote. The Grievance Officer shall coordinate the scheduling of hearings, shall serve to assist all parties and the Hearing Committee to facilitate a full, fair, and efficient resolution of the grievance. The Grievance Officer shall avoid an adversarial approach to the grievance proceedings.

Request for Grievance Hearing – Any request for a grievance hearing shall be filed on a Request for a Grievance Hearing form within fourteen (14) calendar days after filing the Statement of Grievance as described above.

Within fourteen (14) calendar days following receipt of the request for grievance hearing, the College President, or designee, shall appoint a Grievance Hearing Committee as described above. The Grievance Hearing Committee shall meet privately and without the parties present to select a Chair, and to determine whether sufficient grounds for a hearing have been presented on the basis of the Statement of Grievance.

The determination of sufficient grounds for proceeding with the Statement of Grievance, and whether an informal resolution has been provided to the student, shall be based upon 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 includes applicants and former students;
- The grievant is personally and directly affected by the alleged grievance;
- The grievance was filed in a timely manner; and
- The grievance is not frivolous, without foundation, or filed for purposes of harassment.

If the grievance does not meet each of the requirements above, the Chair of the Grievance Hearing Committee shall notify the student in writing of the rejection of the Request for a Grievance Hearing with the specific reasons for the rejection and the procedures for appeal. This notice will be provided within five (5) calendar days of the date the Grievance Hearing Committee makes its decision.

If the Request for Grievance Hearing satisfies each of the requirements, the College Grievance Officer shall schedule a grievance hearing. The hearing will commence within fourteen (14) calendar days following the decision to grant a grievance hearing. All parties to the grievance shall be notified at least three (3) calendar days in advance with information pertaining to the date, time, and place of the hearing.

Hearing Procedure

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

The Grievance Officer will provide members of the Grievance Hearing Committee 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. The Grievance Hearing Committee shall make its determination on a preponderance of evidence. 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(s) shall make the first presentation, followed by the respondent(s). The grievant may present rebuttal evidence after the respondent(s)' evidence. The burden shall be on the grievant(s) 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 themselves and have the right to be represented by a person of their choice unless a representative is an attorney or licensed to practice law. 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 College President or designee. Any legal advisor provided to the Hearing

Committee may be present during the hearing in an advisory capacity to provide legal counsel, but shall not be a member of the panel nor vote.

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 Grievance Officer will record the hearing. This will be the only recording made. Witnesses who refuse to be recorded will not be permitted to give testimony. 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 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 recording.

All witnesses must testify under penalty of perjury. If a witness is unavailable to attend the hearing, the Grievance Hearing Committee will admit written statements of witnesses under penalty of perjury. A witness who refuses to be recorded shall be considered to be unavailable to testify.

Within seven (7) days following the close of the hearing, the Grievance Hearing Committee shall prepare and submit a written communication to the appropriate Vice President, or designee, which shall include factual findings regarding the grievance, as well as specific conclusions and recommendations based upon the facts, testimonies and evidence presented during the course of the hearing. The specific recommendation regarding the relief for the grievant, if any, shall also be included. The Grievance Hearing Committee will base its findings 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 Vice President's Decision: Within seven (7) days following receipt of the Grievance Hearing Committee's findings and recommendation(s), the appropriate Vice President shall inform all parties of their written decision, together with the Hearing Committee's findings and recommendations. The Vice President may accept or reject the findings, and recommendations of the Hearing Committee. The factual findings of the Hearing Committee shall be accorded great weight. If the Vice President does not accept the decision or a finding or recommendation of the Hearing Committee, the Vice President shall review the record of the hearing, and shall prepare a new written decision containing specific factual findings and conclusions. The decision of the College President shall be final.

Appeal: Any appeal relating to the findings of a Grievance Hearing Committee shall be made in writing to the College President within seven (7) days of the Committee's report. The College 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 College President's decision to grant or deny a grievance hearing shall be final and not subject to further appeal.

Time Limits: Any times specified in these procedures may be shortened or lengthened by mutual consent of all parties.