

HARTNELL COMMUNITY COLLEGE DISTRICT

AP 5530 Student Rights, Grievances, and Complaints

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

The purpose of this procedure is to provide a prompt and equitable means of resolving student grievances or complaints. These procedures shall be available to any student who reasonably believes a college decision, action, or incident has adversely affected his or her status, rights or privileges as a student. For the purposes of this procedure, the term “complaint” or “grievance” shall be interchangeable. 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:

- Complaints of harassment or discrimination on the basis of gender, race, color, ancestry, ethnic group, religion, national origin, sexual orientation, or disability. These complaints will be referred to AP 3435, Discrimination and Harassment Complaints and Investigations, for processing in compliance with Title IX.
- 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 **Hearing Panel** or the **Director of Student Affairs**.

Superintendent/President – The **Superintendent/President** or a designated representative of the **Superintendent/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.

STEP 1 – INFORMAL RESOLUTION

The **Superintendent/President** has appointed the **Vice President of Student Affairs and/or the Director of Student Affairs** to assist students in seeking a resolution by informal means.

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 **Student Grievance Form** with the **Director of Student Affairs** within **ten (10)** days of the incident on which the grievance is based, or **ten(10)** 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 five (5) days following receipt of the Grievance Form, the **Director of Student Affairs** 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 Grievance Form. The Student Grievance Form is available on the college web site and through the Office of Student Life.

STEP 2 – REQUEST FOR GRIEVANCE HEARING AND HEARING PANEL

If 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.

Request for Grievance Hearing – Any request for a grievance hearing shall be filed on a **Request for Grievance Hearing Form** within **ten (10)** days after the informal resolution process has been completed. The Request for Grievance Hearing Form is available on the college web site and through the Office of Student Life.

Hearing Panel: The **Superintendent/President** shall at the beginning of each semester, including any summer session, establish a standing panel of **fifteen (15)** members of the college community, including **five (5)** students, **five (5)** faculty members and **five (5)** administrators, from which one or more **Hearing Panels** may be appointed. A **Hearing Panel** shall be constituted in accordance with the following:

- It shall include **one (1)** student, one **(1)** instructor, and **one (1)** college administrator selected from the panel described above.
- No person shall serve as a member of a **Hearing Panel** 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 **Superintendent/President** who shall determine whether cause for disqualification has been shown. If the **Superintendent/President** feels that sufficient ground for removal of a member of the committee has been presented, the **Superintendent/President** 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 **Director of Student Affairs** shall sit with the **Hearing Panel** but shall not serve as a member nor vote. The **Director of Student Affairs** shall coordinate all scheduling of hearings, shall serve to assist all parties and the **Hearing Panel** to facilitate a full, fair and efficient resolution of the grievance, and shall avoid an adversary role.

STEP 3 – HEARING PANEL PROCEDURES

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

The determination of whether the 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 Panel** chair shall notify the student in writing of the rejection of the Request for a **Hearing Panel**, together with the specific reasons for the rejection and the procedures for appeal. This notice will be provided within **ten (10)** days of the date the decision is made by the **Hearing Panel**.

If the Request for a **Hearing Panel** satisfies each of the requirements, the **Director of Student Affairs** 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 **five (5)** days' notice of the date, time and place of the hearing.

Hearing Procedure

The decision of the **Hearing Panel** 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 **Hearing Panel** 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 **Hearing Panel** 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 or respondents. The grievant(s) 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 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 **Hearing Panel**, 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 **Superintendent/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.

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 **five (5)** 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 **Director of Student Affairs** 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 **Hearing Panel** 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 **Hearing Panel** 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.

STEP 4 – GRIEVANCE DECISION

Within **10 (ten)** days following the close of the hearing, the **Hearing Panel** shall prepare and send to the **Superintendent/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.

Superintendent/President's Decision: Within **ten (10)** days following receipt of the **Hearing Panel's** decision and recommendation(s), the **Superintendent/President** shall send to all parties his/her written decision, together with the Hearing Committee's decision and recommendations. The **Superintendent/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 **Superintendent/President** does not accept the decision or a finding or recommendation of the Hearing Committee, the **Superintendent/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 **Superintendent/President** shall be final, subject only to appeal as provided below.

Appeal: Any appeal relating to a **Hearing Panel** decision that the Statement of Grievance does not present a grievance as defined in these procedures shall be made in writing to the **Superintendent/President** within **ten (10)** days of that decision. The **Superintendent/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 ***Superintendent/President***'s decision whether or not to grant a grievance hearing shall be final and not subject to further appeal.

Approved by Superintendent/President: March 10, 2015, revised May 29, 2019