AP 5520 STUDENT DISCIPLINE AND DUE PROCESS

References:
Education Code Sections 66017, 66300, 66301, 72122, 76030-76037, 76120, and 87708;
Penal Code Sections 415 and 626.4

The purpose of this procedure is to provide a prompt and equitable means to address violations of the Standards of Conduct (BP 5500 titled Standards of Conduct) in accordance with students’ rights to due process and free expression as protected by state and federal laws and regulations.

I. DEFINITIONS

Activity -- Any club, organization, or artistic/athletic event, show or performance that the student is not required to attend or participate in as a District class requirement.

Day – Any day on which the District’s Administrative Office is open for business.

Dean – Dean of Student Development and Special Services.

Disciplinary Probation

1) A specified period of conditional enrollment by mutual written agreement signed by the Dean and the student allowing the student to attend classes and/or participate in Activities and during which the student is subject to disciplinary action on terms and conditions specified in the agreement upon any further violation(s) of the Standards of Conduct; or

2) A specified period of conditional re-enrollment, allowing the student to attend classes, with or without permission to participate in Activities, with the Dean’s authorization prior to serving the entire period of a Long-Term Suspension and during which the student is subject to disciplinary action, on terms and conditions determined by the Dean and up to and including reinstatement of the un-served portion of the Long-Term Suspension, upon any further violation(s) of the Standards of Conduct; or

3) A specified period of conditional re-enrollment after suspension or expulsion permitting the student to attend classes, with or without permission to participate in Activities, with the Board of Trustees’ authorization, and during which the student is subject to reinstatement of the unserved portion of the suspension or the expulsion on terms and conditions determined by the Board of Trustees or the Dean upon any further violation(s) of the Standards of Conduct.

District – Marin Community College District.
Expulsion – Permanent exclusion of the student by the Board of Trustees from all courses and Activities when other means of correction fail to bring about proper conduct or when the presence of the student causes a continuing danger to the student or others. (Education Code Section 76030)

Removal

Administrative Removal–Classes – Exclusion of the student by the Dean from some or all classes for no more than two (2) class meetings.

Administrative Removal–Activities – Exclusion of the student by the Dean from some or all Activities for no more than fifteen (15) days.

Removal From Class – Exclusion of the student by an instructor for the day of the removal and, if directed by the instructor, the next meeting of the instructor’s class. (Education Code Section 76032)

Removal From Class-Related Activities – Exclusion of the student by the Dean or by faculty assigned to supervise a library or learning resources center, instructional laboratory, or study facility for the day of the removal and, if directed by the Dean or faculty, next day of required attendance, no more than two (2) days of required attendance, or if attendance is not required, two (2) days.

Student – Any person who is currently enrolled as a student in a credit or noncredit class or in community services offerings of the District, or who was enrolled at the time of an alleged violation of the Standards of Conduct.

Suspension

Activities Suspension – Exclusion of a student from some or all Activities for a period of sixteen (16) days to one or more terms.

Short-Term Suspension – Exclusion of a student for good cause from some or all classes for a period of no more than ten (10) days of instruction. (Education Code Section 76031(a)) A short-term suspension shall include exclusion from Activities and Class-Related Activities for a concurrent period unless otherwise specified.

Long-Term Suspension – Exclusion of the student for good cause from some or all classes for more than ten (10) days to one or more complete terms. (Education Code Section 76031(a) and (b)) A Long-Term Suspension shall include exclusion from Activities and Class-Related Activities for a concurrent period unless otherwise specified.

Immediate Interim Suspension – Immediate exclusion of a student from classes, Activities, and Class-Related Activities when determined necessary by the Dean to protect lives or property and to ensure the maintenance of order. (Education Code Section 66017)

Withdrawal of Consent to Remain on Campus – Withdrawal of consent by the Superintendent/President, the Vice President for Student Learning, or designee to remain on campus or at a District facility where reasonable cause exists to believe that such person has willfully disrupted the orderly operation of the campus or facility. (Penal Code Section 626.4) Withdrawal of
consent shall not preclude disciplinary action for violation(s) of the Standards of Conduct set forth in BP 5500 titled Standards of Conduct based on the same underlying conduct.

**Written or Verbal Reprimand** – An admonition to the student to cease and desist conduct which violates the Standards of Conduct.

II. **VOLUNTARY/APPROPRIATE ALTERNATIVE RESOLUTION.**

When deemed appropriate, the Dean may discuss with a student options for voluntary resolution of discipline issues. Voluntary resolutions may include remedial action or community service; discipline without acknowledging the alleged misconduct; withdrawing from the District; Disciplinary Probation, or other mutually agreeable terms and conditions. (Education Code Section 76031). The Superintendent/President or the Dean may at any time designate another District employee or contractor to perform the tasks assigned to the Dean under this procedure.

III. **REPRIMAND, PROBATION AND REMOVAL**

A. **Written or Verbal Reprimands** – Written or verbal reprimands may be issued by the Dean or any District academic employee. Written reprimands may become part of a student’s permanent record at the District’s discretion. A record that a verbal reprimand has been given may become part of a student’s record at the Dean’s discretion but will be removed after a period of one year upon the written request of the student. The student shall have no right to a hearing regarding a written or verbal reprimand. The issuance of any reprimand, verbal or written, shall be promptly reported to the Dean.

B. **Disciplinary Probation** – Disciplinary probation may be implemented by mutual agreement or with the Dean’s or Board of Trustees’ authorization pursuant to Section II.

C. **Removals**

   1. Class or Class-Related Activities Removals may be implemented if the removing authority determines good cause exists after (a) advising the student of the alleged violations of the Standards of Conduct and the facts upon which the alleged violation(s) are based, and (b) providing the student with an opportunity to respond. Any removal shall be promptly reported to the Dean. If a student who has been removed is a minor, the Dean shall ask the student’s parent/guardian to attend a parent conference regarding the removal as soon as possible. At the instructor’s or parent/guardian’s request, the Dean shall attend the conference. The student shall not be returned to the class or class-related activity during the period of the removal without the concurrence of the removing authority.

   2. Administrative Removals from one or more classes and/or activities and/or class-related activities may be implemented by the Dean if the Dean determines good cause exists after (a) advising the student of the alleged violations of the Standards of Conduct, and the facts upon which the alleged violation(s) are based, and (b) providing the student with an opportunity to respond.

   3. The student shall have no right to an administrative hearing regarding a removal.

   4. After a removal, the Dean may determine it is appropriate to proceed with further disciplinary action, in accordance with these procedures, based on the conduct which led to a removal.
IV. SUSPENSION, WITHDRAWAL OF CONSENT, AND EXPULSION - ADMINISTRATIVE HEARING

A. Suspensions.
Before an Activities Suspension, Short-Term Suspension, Long-Term Suspension, or Expulsion may be imposed, the student shall be given an opportunity for an Administrative Hearing before the Dean.

B. Immediate Interim Suspension.
The Superintendent/President or Dean may impose an Immediate Interim Suspension if he or she concludes that immediate suspension is required to protect lives or property and to ensure the maintenance of order. In such event the student shall be afforded a reasonable opportunity for an Administrative Hearing before the Dean within ten (10) days. (EC 66017.)

C. Withdrawal of Consent to Remain on Campus (Penal Code Section 626.4):
When there is reasonable cause to believe that a student has willfully disrupted the orderly operation of the campus, the Superintendent/President, Vice President for Student Learning, or designee, may notify the student that consent to remain on campus or other District facility has been withdrawn. If the student is on campus at the time, he or she must promptly leave. In no case shall consent be withdrawn pursuant to Penal Code Section 626.4 for longer than fourteen (14) days. Any student who has been notified that consent to remain on campus or other District facility has been withdrawn shall be given an opportunity for an Administrative Hearing with the Dean to determine whether consent shall be reinstated or further discipline should be imposed. A student who remains or reenters the campus for the sole purpose of attending an Administrative Hearing with the Dean shall not be in violation of Penal Code section 626.4 for the period of the hearing.

D. Administrative Hearing Procedures

1. Notice of Administrative Hearing – The Dean shall notify the student of the date, time and place of the Administrative Hearing. In case of an Immediate Interim Suspension, the Administrative Hearing shall be scheduled within ten (10) days. Notice shall be given verbally, by telephone or in person, as soon as practicable and, unless the student has already met with the Dean for an administrative hearing, in writing within three (3) days after the Dean is advised of the student’s suspected misconduct. Written notice may be given by U.S. mail and/or by email at the student’s most recent address on file in the District’s Admissions and Records Office. At or before the Administrative Hearing the Dean shall provide the student with verbal and/or written notice of the Standard(s) of Conduct the student is alleged to have violated and the facts upon which the alleged violation(s) are based. The Dean shall provide the student an opportunity to respond orally and/or in writing at the Administrative Hearing. The Dean may conduct an investigation of the allegations as deemed appropriate including additional meeting(s) with the student which shall be considered part of the Administrative Hearing.

2. Waiver of Hearing – A student who fails to attend an Administrative Hearing without excusable reason shall be deemed to have waived his or her right to an Administrative Hearing. Excusable reason means inability to meet due to student’s hospitalization, incarceration, or other reason beyond the student’s control as determined by the Dean.
E. **Activities Suspension/Short-term Suspension** – After an Administrative Hearing or waiver of Administrative Hearing, based on reasonable and relevant evidence, the Dean may determine that good cause exists to impose an Activities Suspension, Short-Term Suspension, a lesser disciplinary action or an alternative to disciplinary action, or the Dean may decide to dismiss the matter. The Dean may consider the student’s discipline history when making a determination. The Dean shall issue and serve a written Notice of Decision specifying the length of any Activities Suspension, Short-term Suspension or lesser disciplinary or alternative action, the conduct on which the determination was based, and the Standard(s) of Conduct violated. The Dean’s decision shall be final. Alternatively, the Dean may issue and serve a Notice of Dismissal.

F. **Immediate Interim Suspension/Withdrawal of Consent** – After an Administrative Hearing or waiver of Administrative Hearing regarding an Immediate Interim Suspension or Withdrawal of Consent to Remain on Campus, based on reasonable and relevant evidence, if the Dean determines that good cause exists to impose other disciplinary action, the Dean shall proceed in accordance with these procedures except that it shall not be necessary to conduct another Administrative Hearing. If the Dean determines that it is necessary to continue the Immediate Interim Suspension to protect lives or property and to ensure maintenance of order pending final determination on disciplinary action, the Dean shall issue a written notice to the student promptly after the Administrative Hearing or waiver of Administrative Hearing. Alternatively, the Dean may issue a Notice of Right to Return. Any notice shall be served as provided in Section IV.H.

G. **Long-term Suspension and Expulsion** – After an Administrative Hearing or waiver of Administrative Hearing, based on reasonable and relevant evidence, the Dean may determine that good cause exists to impose a Long-Term Suspension, Expulsion, or some lesser disciplinary action or alternative to disciplinary action, or the Dean may decide to dismiss the matter. The Dean may consider the student’s discipline history when making a determination. If the determination is to impose disciplinary action other than Long-Term Suspension or Expulsion, the Dean shall issue a written Notice of Decision or Notice of Dismissal as specified in Section IV. E., above, and the Dean’s decision shall be final.

If the Dean determines that good cause exists to impose a Long-Term Suspension or Expulsion, the Dean shall issue a Notice of Recommended Disciplinary Action specifying the length of the recommended Long-Term Suspension or his/her recommendation for Expulsion, as the case may be, and advising the student of the right to request an Appeal Hearing. The Notice of Recommended Disciplinary Action shall include a statement of the facts on which the determination was based, the Standard(s) of Conduct violated, and either include a copy of these procedures or inform the student where he/she may obtain a copy.

H. **Service of Notices**

Except as otherwise specified in these procedures, written notices shall be served by certified mail at the student’s most recent address on file in the District’s admissions and records office, or by personal delivery, and shall be deemed served two days after deposit in the mail with postage prepaid or upon personal delivery.
V. APPEAL HEARING – LONG-TERM SUSPENSION/EXPULSION

A. Request for Appeal Hearing
If the student desires to appeal a Long-Term Suspension or Expulsion Recommendation, the student shall serve a written Request for Appeal Hearing no later than seven (7) days after student’s receipt of the Notice of Recommended Disciplinary Action. Service of the notice shall be as specified in Section IV.H.

B. Waiver of Appeal Hearing
If a Request for Appeal Hearing is not received in the Dean’s office by 5:00 p.m. on or before the seventh day, the right to an Appeal Hearing shall be deemed waived, and the Dean shall prepare an Investigation Report and promptly forward it with a copy of the Notice Recommended Disciplinary Action to the Superintendent/President for review pursuant to Section VI, below.

C. Notice of Appeal Hearing – Statement of Charges
If the student serves a timely Request for Appeal Hearing, the Dean shall forward it to the Superintendent/President or designee, who shall notify the student of the date, time and place of the hearing by serving a Notice of Appeal Hearing at least ten (10) days before the hearing date.

The Notice of Recommended Disciplinary Action shall serve as the Statement of Charges unless it is amended and served on the student at least five (5) calendar days prior to the Appeal Hearing date.

The Notice of Appeal Hearing and any amendment(s) to the Statement of Charges shall be served as provided in Section IV.H.

D. Appeal Hearing Date
The Appeal Hearing shall be held within thirty (30) days after submittal of a timely Request for Appeal Hearing, unless for good cause the Superintendent/President or designee extends the Appeal Hearing date.

E. Hearing Officer
The Superintendent/President or designee shall assign the Appeal Hearing to a District administrator or other qualified, non-District employee who shall serve as the Hearing Officer. Prior to the assignment, the Superintendent/President or designee shall first determine to his/her satisfaction that the Hearing Officer does not have any personal knowledge of or involvement in the matter and that the Hearing Officer is able to provide an unbiased review and determination of the matter.

F. Conduct of Appeal Hearing
1. The Hearing Officer shall be provided with a copy of the Statement of Charges and any written response submitted by the student.

2. Formal rules of evidence shall not apply, but relevant evidence may be admitted and considered only if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. A Long-Term Suspension or
Expulsion cannot be sustained solely upon hearsay evidence. The Hearing Officer may consider the student’s discipline history when making a determination. The student may submit at the Appeal Hearing a verbal or written statement regarding his/her discipline history but shall not be permitted to call witnesses, introduce documents or give testimony to refute the conduct on which the previous disciplinary action(s) was/were based or the appropriateness of the previous disciplinary action(s).

3. Unless the Hearing Officer determines to proceed otherwise, the District representative and the student shall each be permitted to make an opening statement. Thereafter, the District representative shall present evidence, followed by the student. The District representative may present rebuttal evidence after the student completes his/her defense. The District representative and the student may be permitted to make a closing statement. Opening and closing statements shall not be treated as evidence.

4. The District representative and the student may call and question witnesses and introduce oral and written evidence relevant to the matter. To avoid duplicative or irrelevant evidence, the Hearing Officer may require a party to state the nature of the proposed testimony or written document as a condition to introducing the testimony or document at the hearing. Witnesses may not be compelled to testify at the hearing.

5. The student may represent himself/herself at the appeal hearing and may be assisted by a person of his/her choice at the student’s sole expense.

6. The District may be represented by the Dean, or designee, either of whom may be assisted by a person of the Dean’s or designee’s choice at the District’s sole expense.

7. During the Appeal Hearing, an assistant to either party may be present and advise the party but shall not participate in the hearing by examining or cross-examining witnesses, submitting or objecting to documents, or otherwise directly addressing other witnesses or the Student Conduct Panel or Hearing Officer, except to state his/her name for purposes of identification.

8. If either party elects to also be represented by an attorney at the Appeal Hearing, the party shall notify the other party in writing at least five (5) days prior to the date of the Appeal Hearing. Notice shall be directed to the student or the Superintendent/President and served personally or by certified mail as provided in Section IV.H.

For purposes of these procedures, the term “represented by an attorney” means any or all of the following will be conducted by a person currently or previously licensed to practice law: examination or cross-examination of witnesses, submitting or objecting to documents, stating objections, making opening or closing statements or otherwise directly addressing witnesses or the Hearing Officer other than to state his/her name for purposes of identification.

9. The Hearing Officer may have an attorney in attendance at the Appeal Hearing to sit in an advisory capacity and provide legal counsel.
10. The hearing shall be closed and confidential unless the student requests that it be open to the public. Any such request must be made in writing and received by the President/Superintendent at least five (5) days prior to the date of the Appeal Hearing. If the presentation of any evidence at a public hearing would conflict with the rights to confidentiality or privacy of any other person, the Appeal Hearing shall proceed in closed session to the extent necessary to preserve those rights.

11. All witnesses (except the student and the Dean, Dean’s designee, or other District representative) shall be excluded from the hearing room prior to testifying and, unless the hearing is public, shall leave the hearing room after completion of their testimony.

12. The District shall record the Appeal Hearing by tape, digital or stenographic recording. No other recording of the hearing shall be made without the express authorization of the Hearing Officer. No witness who refuses to be recorded will be permitted to testify. The recordings shall remain in the custody of the District at all times, unless released to a professional transcribing service. The student may request a copy of the recording.

G. Appeal Hearing Decision
Within ten (10) days following the conclusion of the Appeal Hearing, the Hearing Officer shall prepare and send to the Superintendent/President (1) a written advisory decision based upon substantial evidence adduced at the hearing, and (2) a complete copy of the record of the Appeal Hearing. The decision shall include factual findings, conclusions as to whether any specific section(s) of the Standards of Student Conduct was/were violated, and a recommendation for disciplinary action which shall not exceed the disciplinary action specified in the Statement of Charges or Amended Statement of Charges, as the case may be.

The decision shall be based only on the record of the Appeal Hearing, which shall include the Statement of Charges, original or amended, as the case may be, the student’s written response, if any, the oral and documentary evidence adduced at the hearing, the recording made pursuant to Section V.F.12., and District’s official records of the student’s discipline history, if any.

VI. SUPERINTENDENT/PRESIDENT’S REVIEW - Long-Term Suspension and Expulsions

A. Within ten (10) days following the receipt of the Hearing Officer’s advisory decision and record of Appeal Hearing, the Superintendent/President shall determine whether to accept, modify or reject the decision. The Superintendent/President’s decision shall be based solely on the record of the Appeal Hearing. If the Superintendent/President decides to modify or reject the decision, he/she shall prepare a written decision with specific factual findings and conclusions based upon the record of the Appeal Hearing.

B. If the Dean recommended Long-Term Suspension or Expulsion and the student waived his/her right to an Appeal Hearing, the Superintendent/President shall determine whether to accept, modify, or reject the recommendation based on the Dean’s Investigation Report, the Notice of Recommended Disciplinary Action, and the Student’s written response, if any.

C. The decision of the Superintendent/President to impose a Long-Term Suspension or lesser disciplinary action shall be final.
D. If deemed appropriate, the Superintendent/President may state in the Notice of Final Decision that the student is permitted to apply to the Dean for re-enrollment after service of a specified portion of the Long-Term Suspension; however, early re-enrollment shall be under Disciplinary Probation in accordance with terms and conditions determined by the Dean. The student shall meet with the Dean, and if the Dean permits the student to re-enroll early, the Dean shall notify the student in writing of the terms and conditions of the Disciplinary Probation, and the student shall be required to sign and return a copy to the Dean as a condition of re-enrollment. The Superintendent/President’s Notice of Final Decision and the Dean’s notice regarding Disciplinary Probation, if any, shall be served as specified in Section IV.H.

E. If the Superintendent/President determines that Expulsion is appropriate, the Superintendent/President’s recommendation shall be made in writing to the Board of Trustees and served on the student in accordance with Section IV.H.

VII. BOARD OF TRUSTEES’ REVIEW–Expulsions

A. The Board of Trustees shall consider any recommendation from the Superintendent/President for expulsion at the next regularly scheduled meeting of the Board occurring at least ten (10) days after receipt of the recommendation or, at the Board of Trustees’ option, at a special meeting convened within thirty (30) days after receipt of the recommendation. The student shall be given written notice of the date, time, and place of the meeting at least five (5) calendar days prior to the meeting. Service shall be in accordance with Section IV.H.

B. The Board of Trustees shall review an expulsion recommendation in closed session, unless the student requests that the matter be considered in a public meeting by submitting a written request for open meeting to the Superintendent/President’s office at least two (2) days prior to the meeting date. Notwithstanding a student’s request for a public meeting, the Board of Trustees shall conduct any discussion and/or review of records in closed session to the extent necessary to preserve the confidentiality or privacy rights of any other person.

C. The Board of Trustees may accept, modify or reject the findings, decisions, and/or recommendation of the Superintendent/President. If the Board of Trustees’ decision is to modify or reject the expulsion recommendation after review of the Appeal Hearing record, or Dean’s Investigation Report when the student has waived his/her right to an Appeal Hearing, the Board of Trustees shall prepare a written decision which includes the Board’s factual findings, the Standards of Conduct violated, conclusions and disciplinary action, if any. The decision of the Board of Trustees shall be based only on the record of the Appeal Hearing or Dean’s Investigative Report.

D. The final action of the Board of Trustees shall be taken at a public meeting, and the result of the action shall be a public record of the District. The Notice of Final Decision shall be served upon the student as specified in Section IV.H. The decision of the Board of Trustees shall be final.

E. If the Board of Trustees orders Long-Term Suspension, the Board of Trustees may state in the Notice of Final Decision that the student is permitted to apply to the Dean for re-enrollment under Disciplinary Probation after service of a specified portion of the suspension. The terms and conditions of the Disciplinary Probation shall be as specified by the Board of Trustees, or if
not specified, as determined by the Dean. If the Dean permits the student to re-enroll early, the Dean shall notify the student of the terms and conditions of the Disciplinary Probation, and the student shall be required to sign and return a copy to the Dean as a condition of re-enrollment. The Dean’s notice regarding Disciplinary Probation, if any, shall be served as specified in Section IV.H.

F. Re-enrollment in the District after expulsion may be authorized only by the Board of Trustees and shall be subject to Disciplinary Probation on terms and conditions determined by the Board of Trustees or its designee.

VIII. RE-ENROLLMENT INTERVIEW

Any student who has been suspended or by action of the Board of Trustees been authorized to re-enroll after expulsion shall, prior to re-enrollment, meet with the Dean for a Re-enrollment Interview to review the Standards of Conduct (BP 5500 titled Standards of Conduct), behavioral expectations, and potential consequences of any further misconduct. At the Dean’s discretion, the Re-enrollment Interview may be scheduled to take place at the same time as the meeting regarding Disciplinary Probation pursuant to Sections VI.D. or VII.F.

IX. ACADEMIC DISHONESTY

In addition to disciplinary action in accordance with the procedures set forth above, academic sanctions may be imposed by an instructor in cases of academic dishonesty. Academic sanctions may include, but not be limited to, a written warning; a failing grade on the test, paper or examination; or a lowered course grade.

Incidents of academic dishonesty and sanctions should be promptly reported in writing to the Dean with a copy to the student. The Dean will determine whether to initiate disciplinary action.

The Dean shall maintain a confidential record of students who have been reported for academic dishonesty.

Date Approved: January 17, 2012
(Replaces part of College of Marin Procedures 4.0003 DP.10 and 4.0022 DP.1)