

THE CALIFORNIA STATE UNIVERSITY  
OFFICE OF THE CHANCELLOR

BAKERSFIELD

August 3, 2009

CHANNEL ISLANDS

CHICO

**MEMORANDUM**

DOMINGUEZ HILLS

TO: CSU Presidents

EAST BAY

FROM: Charles B. Reed  
Chancellor



FRESNO

FULLERTON

SUBJECT: Student Conduct Procedures – Executive Order No. 1043

HUMBOLDT

Attached is a copy of Executive Order No. 1043, Student Conduct Procedures, which replaces Executive Order No. 970. It includes three notable changes. Article III, Section 3 addresses the use of attorneys and now clarifies that each campus must establish a standing policy about whether or not attorneys can be part of the student conduct process on that campus. Article IV, Section 7 is amended to comport with the new notice to “victims of crimes of violence” provisions in the Higher Education Opportunity Act of 2008. Finally, Article VI is updated to explain in greater detail the requirements for placing students on Interim Suspension.

LONG BEACH

LOS ANGELES

MARITIME ACADEMY

MONTEREY BAY

In accordance with policy of the California State University, the campus president has the responsibility for implementing executive orders where applicable and for maintaining the campus repository and index for all executive orders. This executive order should be distributed to employees responsible for student conduct matters and made available to all CSU students. These procedures are established pursuant to California Code of Regulations, Title 5, Section 41301, et seq., and govern all student disciplinary matters systemwide.

NORTHRIDGE

POMONA

SACRAMENTO

SAN BERNARDINO

SAN DIEGO

Questions regarding this executive order may be addressed to Mr. Allison G. Jones, Assistant Vice Chancellor, Academic Affairs, Student Academic Support, at (562) 951-4744 or [ajones@calstate.edu](mailto:ajones@calstate.edu).

SAN FRANCISCO

Attachment

SAN JOSÉ

cc: CSU Provosts/Vice Presidents for Academic Affairs  
CSU Vice Presidents for Administration  
CSU Vice Presidents for Student Affairs  
Executive Staff, Office of the Chancellor  
Ms. Sarah Vagts, CSSA

SAN LUIS OBISPO

SAN MARCOS

SONOMA

STANISLAUS

THE CALIFORNIA STATE UNIVERSITY  
Office of the Chancellor  
401 Golden Shore  
Long Beach, California 90802-4210  
(562) 951-4500

**Executive Order:** 1043  
**Effective Date:** August 3, 2009  
**Supersedes:** Executive Order No. 970  
**Title:** Student Conduct Procedures

**ARTICLE I: AUTHORITY AND PURPOSE**

These procedures are established pursuant to Section 41301 of Title 5 of the California Code of Regulations, and govern all student disciplinary matters systemwide.

**ARTICLE II: DEFINITIONS**

1. **“Campus”** and **“university”** are used interchangeably and both mean the California State University.
2. **“Member of the university community”** means California State University trustees, employees, students, and university guests who are on university property or at a university related activity.
3. **“Sexual misconduct”** means any non-consensual sexual intercourse, sexual assault, sexual exploitation, indecent exposure or attempt to commit any of these acts.
4. **“Student Conduct Code”** means Section 41301 et seq. of Title 5 of the California Code of Regulations.
5. **“University official”** means any person employed by a campus, performing administrative or professional duties.

6. **“University property”** means:
  - a. real or personal property in the possession, or under the control, of the Board of Trustees of the California State University, and
  - b. all campus facilities whether utilized by the university or a campus auxiliary organization.
7. **“University related activity”** means any event sponsored by, coordinated with, or directly affecting the university’s regular functions.
8. **“Working day”** means any day of the academic year, summer session or special session, other than a Saturday, Sunday, or academic holiday as that term is defined in Section 42800 of Title 5 of the California Code of Regulations.

### **ARTICLE III: GENERAL PROVISIONS**

#### **1. Student Conduct Administrator**

Each campus president assigns a campus official or officials to be the Student Conduct Administrator, whose responsibilities are to determine whether to initiate disciplinary action under the Student Conduct Code and to perform duties as prescribed in these procedures. Student Conduct Administrators serve at the pleasure of the president.

#### **2. Hearing Officers**

Each campus president appoints one or more persons to serve as Hearing Officers. They may be campus officials, attorneys licensed to practice in California, or administrative law judges from the Office of Administrative Hearings. Subordinates of the Student Conduct Administrator, persons with a conflict of interest in the matter, and percipient witnesses to the events giving rise to the case are ineligible to serve as Hearing Officers. The Hearing Officer conducts the hearing, determines whether a student has violated the Student Conduct Code and if so, recommends sanction(s).

#### **3. Attorneys**

Student Conduct proceedings are not meant to be formal court-like trials. Although university related sanctions may be imposed, the process is intended to provide an opportunity for learning. Each campus president determines as a matter of standing campus directive whether attorneys are permitted to be present in all or some campus proceedings. The president’s determination regarding the presence of attorneys applies to both the student charged and the campus. Both the student and the campus can consult attorneys outside of the actual proceedings irrespective of the president’s determination. Any person licensed to practice law is considered an attorney for this purpose.

#### **4. Interpretation of the Code or Process**

All issues regarding the hearing described in Article IV, Section 4, except those specifically noted, are within the purview of the Hearing Officer for final determination. Questions of interpretation or application of the Student Conduct Code or this executive

order are outside the purview of the Hearing Officer and are determined by the campus Vice President for Student Affairs or his or her designee.

**5. Delegation of Duties**

The duties of the president in these proceedings may be delegated to another campus official.

**6. Parallel Judicial Proceedings**

Student Conduct Code proceedings are independent from other court proceedings. Student discipline may be instituted against a student also charged in civil or criminal courts based on the same facts that constitute the alleged violation of the Student Conduct Code. The university may proceed before, simultaneously with, or after any other judicial proceedings.

**7. Time Lines**

All times set in this executive order may be extended by the university when necessary. Extensions shall be determined by the Vice President for Student Affairs.

**ARTICLE IV: PROCEEDINGS**

**1. Investigation**

- a. Whenever it appears that the Student Conduct Code has been violated, a complaint should be directed to the Student Conduct Administrator as soon as possible after the event takes place. The complaint can be oral or in writing.
- b. The Student Conduct Administrator investigates each complaint submitted and determines whether it is appropriate to charge a student with violation of the Student Conduct Code.

**2. Conference**

- a. The Student Conduct Administrator holds a conference with the student charged, and obtains his or her response to the alleged misconduct, except in instances where the student charged declines to cooperate, in which case the conference requirement is waived. The student may bring a person with him/ her to advise him/her during the conference with the Student Conduct Administrator. The student's advisor is there to provide support and not to speak on behalf of the student. If agreement can be reached as to an appropriate disposition of the matter, it will be closed and the terms of the disposition shall be put in writing and signed by the student charged and the Student Conduct Administrator.
- b. If the student admits violating the Student Conduct Code but no agreement can be reached on an appropriate sanction, the student charged may request a hearing on the sanction only.

**3. Notice of Hearing**

- a. If the alleged violation of the Student Conduct Code is not resolved at the conference with the Student Conduct Administrator and the Student Conduct Administrator has determined that formal disciplinary action is appropriate, or if the student charged requests a hearing on the sanction only, the Student Conduct Administrator issues a Notice of Hearing.
  1. The Notice is sent electronically to the charged student at the university assigned e-mail address linked to the account provided by the California State University (i.e., "xxx.edu.").
  2. Until June 30, 2010 the Notice is also served on the student charged in person, or by traceable mail (e.g., certified mail) to the last address that student has on record with the university.
- b. The Notice of Hearing must include:
  1. The section(s) of the Student Conduct Code that the student is charged with violating.
  2. A factual description of the student's conduct that forms the basis for the charge(s).
  3. The proposed sanction.
  4. Notification that neither the Hearing Officer nor the president is bound by the proposed sanction, and either, or both, may set a more severe sanction.
  5. The date, time and place of the hearing.
  6. The location on the campus where the student can view his or her discipline file, including the location (or copies) of the campus policies that were violated.
  7. Notification that the student may be accompanied at the hearing by an advisor and the campus policy regarding use of attorneys, if they are prohibited. If attorneys are allowed, notification shall be given that, if the student intends to bring his/her attorney, the student must inform the Student Conduct Administrator of the attorney's name, address and phone number at least five working days before the hearing.
  8. Notification that the student can waive his/her right to a hearing by accepting the proposed sanction.
  9. Notification of any immediate suspension and/or withdrawal of consent to remain on campus. (See Article VI below.)

10. A copy of this executive order or notice of where the student may obtain a copy. If consent to remain on campus has already been withdrawn by the time the Notice of Hearing is sent, a copy of this executive order must be enclosed along with any other campus policy referenced in the Notice of Hearing.
- c. The Notice of Hearing is sent to the student at least 10 working days before the hearing.
- d. The charges stated in the Notice of Hearing may be amended at any time. If an amendment would require the student to prepare a different response, the student may request a postponement of the hearing for a reasonable period of time. If the charges are amended after a hearing is underway, the Hearing Officer may postpone the hearing for a reasonable period of time.

#### 4. **Hearing**

- a. The hearing is closed to all persons except the Hearing Officer, the student charged, the Student Conduct Administrator, one advisor for the student charged, one advisor for the Student Conduct Administrator, appropriate witnesses during the time that they are testifying (including a support person for alleged victims of sexual or physical assault, see section h below), and one person to assist the Hearing Officer in recording the hearing. A police or security officer may also be present if deemed appropriate by the Vice President for Student Affairs. The university will cooperate in providing employee witnesses wherever possible, provided that they are identified at least two working days before the hearing.
- b. The student may be accompanied by one advisor of his or her choice to provide support but not to speak on behalf of the student. If the campus policy excludes attorneys from the proceeding, the advisor may not be an attorney. Hearing dates will not be changed because of the schedule of the advisor for the student charged.
- c. The Student Conduct Administrator may be accompanied by one advisor. If the campus policy excludes attorneys from the hearing, neither the Student Conduct Administrator nor the Administrator's advisor may be an attorney.
- d. Hearings are intended to be educational rather than adversarial. The Hearing Officer runs the hearing. The student charged and the Student Conduct Administrator each put on the evidence in their case in whatever manner the Hearing Officer deems appropriate and may each ask questions of the witnesses. The Hearing Officer may also ask questions of any witness, the student charged or the Student Conduct Administrator.
- e. Formal rules of evidence applied in courtroom proceedings do not apply in the hearing (e.g., California Evidence Code). All information that responsible persons are accustomed to rely upon in the conduct of serious affairs including

hearsay is considered. Unduly repetitive information may be excluded. The Hearing Officer bases his/her decision only on the information received at the hearing.

- f. The Hearing Officer makes an official audio recording of the hearing. S/he can have someone present to operate any equipment necessary to make the recording. The recording is the property of the university. No other recording of the hearing is permitted.
- g. If the student charged fails to appear at the hearing, the hearing proceeds without him/her. The decision, like every other hearing decision, must be based on the information presented. The student charged may not be found to have violated the Student Conduct Code solely because he/she failed to appear at the hearing.
- h. In cases involving a charge of sexual or physical misconduct, the alleged victim may be accompanied at the hearing by another person. This person is for support only, and is not permitted to participate in the hearing. Questions of the alleged victim are limited to the incident upon which the charge is based and the events surrounding that charge, and may not delve into past sexual behaviors of the alleged victim.
- i. The Hearing Officer is responsible for maintaining order during the hearing and makes whatever rulings are necessary to ensure a fair hearing. Abusive behavior is not tolerated. The Hearing Officer may eject or exclude anyone who refuses to be orderly, including the student charged.
- j. The Hearing Officer's decisions regarding procedural issues are final.
- k. Where there is more than one student charged arising out of a single occurrence, or related multiple occurrences, the Student Conduct Administrator and the students charged may agree to a single hearing for all of the students. A charged student may request consolidation of his/her case with others. The Student Conduct Administrator makes consolidation decisions, which are subject to review by the Hearing Officer and thereafter are final. The separation of one or more cases from a case previously set for a consolidated hearing shall not be considered to affect the other cases.
- l. At any time during the hearing, the student charged may waive the right to a hearing and accept the proposed sanction. Such a waiver must be in writing.

**5. Standard of Proof and Recommendation of the Hearing Officer**

- a. The Hearing Officer makes decisions only on information presented at the hearing. After the hearing the Hearing Officer makes findings of fact and conclusions about whether the information presented constitutes a violation of the Student Conduct Code. **The standard for the Hearing Officer's decision is whether the university's charge is sustained by a preponderance of the**

**evidence. It is the university's burden to show that it is "more likely than not" that the student violated the Student Conduct Code.**

- b. The Hearing Officer submits a written report of his/her findings and conclusions to the president, along with any appropriate recommended sanction. This report is submitted within ten working days after the hearing.

#### **6. The Final Decision**

- a. The president reviews the Hearing Officer's report and issues a final decision. The president may impose the sanction recommended, adopt a different sanction, reject sanctions altogether, or refer the matter back for further findings on specified issues. If the president adopts a more severe sanction than what is recommended by the Hearing Officer, the president must set forth the reasons in the final decision letter. The president's final decision letter is issued within five working days after receipt of the Hearing Officer's report.
- b. The president sends notice of his/her decision electronically to the charged student at the university assigned e-mail address linked to the account provided by the California State University (i.e., "xxx.edu.").
- c. Until June 30, 2010 the notice of decision is also sent by personal delivery or through traceable mail (e.g., certified mail) to the last address that student had on record with the university. After the decision has been sent the Hearing Officer's report is available for review by the student charged within a reasonable time upon request.

#### **7. Notice to Victims of Crimes of Violence and Sex Offenses**

In cases involving a "crime of violence" the university *may* notify the alleged victim(s) of the final results of a hearing as it relates to those charges regardless of whether or not the charges are sustained. (34 C.F.R. § 99.31 et seq.)<sup>1</sup> If the alleged victim of a "crime of violence" makes a written request for the results of the proceeding the university *must* provide the outcome of the proceeding related to that charge. Similarly, where the charge relates to a sexual assault the university *must* notify the alleged victim of the outcome of the proceeding (20 U.S.C. § 1092). This information is only given to the victim(s) and includes the name of the accused student, any violation alleged committed, and any sanction(s) imposed on that student (20 U.S.C. § 1232g).

### **ARTICLE V: SANCTIONS**

1. The following sanctions may be imposed for violation of the Student Conduct Code:
  - a. Restitution - Compensation for loss, damages or injury. This may include appropriate service and/or monetary material replacement.

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<sup>1</sup> A "crime of violence" includes: arson, assault offenses, burglary, criminal homicide (manslaughter by negligence), criminal homicide (murder and non-negligent manslaughter), destruction/damage/vandalism of property, kidnapping/abduction, robbery, and forcible and non-forcible sex offenses. 99 C.F.R. § 99.39.

- b. Loss of Financial Aid - Consistent with California Education Code Sections 69810 et seq., scholarships, loans, grants, fellowships and any other types of state financial aid given or guaranteed for the purposes of academic assistance can be conditioned, limited, cancelled or denied.
- c. Educational and Remedial Sanctions - Assignments, such as work, research, essays, service to the university or the community, training, counseling, or other assignments intended to discourage a repeat of the misconduct or as deemed appropriate based upon the nature of the violation.
- d. Denial of Access to Campus - A designated period of time during which the student is not permitted on university property or specified areas of campus. (*See* California Penal Code § 626.2.)
- e. Disciplinary Probation - A designated period of time during which privileges of continuing in student status are conditioned upon future behavior. Conditions may include, for example, the potential loss of specified privileges to which a current student would otherwise be entitled, or the probability of more severe disciplinary sanctions if the student is found to violate any university rule during the probationary period.
- f. Suspension - Separation of the student from CSU student status for a certain period of time, after which the student is eligible to reapply to the university. Conditions for readmission may be specified.
- g. Expulsion - Permanent separation of the student from CSU student status from the California State University system.
- h. Admission or Readmission - Admission or readmission to the California State University may be qualified, revoked or denied to any person found to have violated the Student Conduct Code.

2. **Multiple Sanctions**

More than one sanction may be imposed for a single violation.

3. **Good Standing**

A student is not considered to be in good standing for purposes of admission to the California State University while under a sanction of suspension, or expulsion, or while his or her admission or re-admission has been qualified (Section 40601 (g) of Title 5 of the California Code of Regulations).

**4. Administrative Hold and Withholding a Degree**

The university may place an administrative hold on registration transactions and release of records and transcripts of a student who has been sent a Notice of Hearing and may withhold awarding a degree otherwise earned until the completion of the process set forth in the Student Conduct Code, including the completion of all sanctions imposed.

**5. Record of Discipline**

Disciplinary Probation is entered on a student's transcript, with beginning and end date, for the period of time that the probation is in effect. Suspension is entered on the student's transcript, with beginning and end date, for the period of time that the suspension is in effect, but remains on the transcript permanently if the suspension is for longer than one academic year. Expulsion is entered on the student's transcript permanently along with the date it takes effect.

**ARTICLE VI: INTERIM SUSPENSION**

**1. Grounds**

A president may impose an interim suspension where there is reasonable cause to believe that separation of a student is necessary to protect the personal safety of persons within the university community, property of the university or to ensure the maintenance of order (Section 41302 of Title 5 of the California Code of Regulations).

**2. Notice and Opportunity for Hearing**

A student placed on interim suspension is given prompt notice of the charges pending against him or her as enumerated in Section 41301 of Title 5 of the California Code of Regulations and a factual description of the conduct alleged to form their basis. The opportunity for a hearing within ten working days of the imposition of the suspension is also required. (Section 41302 of Title 5 of the California Code of Regulations). Where a timely request is made, a hearing will be held to determine whether continued suspension is required to protect personal safety or property or to ensure the maintenance of order. This hearing may also serve as the disciplinary hearing in accordance with the procedures outlined in Article IV, provided that proper notice has been given. The hearing is conducted pursuant to the provisions of Article IV, Section 4 of these procedures. If the university proves that there is reasonable cause for the interim suspension to continue it shall remain in effect until the university closes the disciplinary matter, whether by settlement, final decision or dropped charges, but in no case longer than the president has determined is required to protect the personal safety of persons within the university community, property of the university or to ensure the maintenance of order.

**3. Denial of Presence on Campus**

During the period of an interim suspension, the student charged may not, without prior written permission from his/her campus president, enter any campus of the California State University other than to attend the hearing regarding the merits of his/her suspension. Violation of any condition of interim suspension shall be grounds for expulsion (Section 41302 of Title 5 of the California Code of Regulations).

**ARTICLE VII: CONDUCT BY APPLICANTS FOR ADMISSION**

Admission or readmission may be qualified, revoked or denied to any person who commits acts that would be the basis for disciplinary proceedings pursuant to these procedures. Qualified admission or denial of admission in such case shall be determined by a hearing held pursuant to Article IV of these procedures.

A handwritten signature in cursive script, reading "Charles B. Reed", written in black ink. The signature is positioned above a horizontal line.

Charles B. Reed, Chancellor

Dated: August 3, 2009