

THE CALIFORNIA STATE UNIVERSITY
Office of the Chancellor
400 Golden Shore
Long Beach, California 90802-4275

Date: September 30, 1994
To: Presidents
From: Barry Munitz *BM*
Chancellor
Subject: Revised Student Discipline Procedures
Executive Order No. 628

I am transmitting to you five copies of Executive Order No. 628 which revises the Student Disciplinary Procedures of the California State University. The Office of General Counsel is preparing a separate memorandum which will discuss these procedures in greater detail. Any questions which you may have regarding this Executive Order should be directed to Linda S. MacAllister, University Counsel, at (310) 985-2913.

In accordance with the 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.

Attachment

Distribution: Vice Presidents/Deans, Student Affairs
Chancellor's Office Staff

THE CALIFORNIA STATE UNIVERSITY
Office of the Chancellor
400 Golden Shore
Long Beach, California 90802-4275

Executive Order No.: 628
Title: Student Disciplinary Procedures
Effective Date: September 30, 1994
Supersedes: Executive Order No. 148

The attached Student Disciplinary Procedures, dated September 30, 1994, are established pursuant to Section 41304 of Title 5 of the California Code of Regulations. They govern determinations under Article 2, Subchapter 4, Chapter 1, Division 5 of that Code and other state and federal laws which require institutional hearings. They supersede the procedures previously in force in Executive Order No. 148 as to all student disciplinary matters commenced on or after September 30, 1994.

Dated: September 30, 1994



Barry Munitz, Chancellor

EXECUTIVE ORDER NO. 628

***Student Disciplinary Procedures
for
The California State University***



September 30, 1994

EXECUTIVE ORDER NO. 628

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EXECUTIVE ORDER NO. 628
STUDENT DISCIPLINARY PROCEDURES
FOR
THE CALIFORNIA STATE UNIVERSITY

ARTICLE I: AUTHORITY AND PURPOSE

These procedures are established pursuant to Section 41304 of Title 5 of the California Code of Regulations. They govern determinations under Article 2, Subchapter 4, Chapter 1, Division 5 of that Code and other state and federal laws which require institutional hearings.

ARTICLE II: DEFINITIONS

1. The term "**campus**" means a campus of the California State University.
2. The term "**campus official**" includes any person employed by a campus, performing assigned administrative or professional responsibilities.
3. The term "**Coordinator of University Student Discipline**" means a campus official or officials assigned by the President to be in charge of the administration of these procedures and to perform the duties prescribed in these procedures.
4. The term "**hearing officer**" means a person or persons appointed by the President to determine whether a student has violated the Student Code and to recommend imposition of sanctions.
5. The term "**may**" is used in the permissive sense.
6. The term "**President**" refers to the chief executive officer of a campus or that person's designee.
7. The term "**shall**" is used in the mandatory sense.
8. The term "**student**" means any person taking courses at a campus, both full-time and part-time, including summer session, special session and Extended Education.
9. The term "**Student Code**" is defined as the causes for discipline listed in Section 41301 of Title 5 of the California Code of Regulations.
10. The term "**working day**" shall mean any day during the academic year, summer session and special session other than a Saturday, Sunday, academic holiday of a campus as that term is used in Section 42800 of Title 5 of the California Code of Regulations.

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ARTICLE III: DUTIES OF PRESIDENT

1. Use of Attorneys

The President shall determine whether attorneys may be used in any or all parts of these proceedings. The inclusion or exclusion of attorneys from any or all parts of these proceedings shall apply equally to the campus and the student charged. Exclusion of attorneys from any or all parts of these proceedings does not prohibit the campus or the student charged from consulting an attorney, nor does it prohibit the hearing officer from being an attorney.

2. Assign Coordinator of University Student Discipline

The President shall assign a campus official or officials to be the Coordinator of University Student Discipline.

3. Appoint Hearing Officers

The President shall appoint one or more persons to serve as Hearings Officers. Hearing Officers may be campus officials, attorneys who are admitted to practice law in California or administrative law judges from the Office of Administrative Hearings. Subordinates of the Coordinator of University Student Discipline and any person who is a percipient witness of the events giving rise to a particular case are ineligible to serve as a Hearing Officer on that case.

4. Final Decision

The President shall have the responsibility of making the final decision regarding disciplinary action after reviewing a Hearing Officer's written report.

5. Notification of Decision

The President shall cause notice of his or her decision to be sent to the student charged as provided in Section 6.b. of Article IX.

6. Delegation of Duties

The duties of the President may be delegated to individual designees who are campus officials.

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**ARTICLE IV: DUTIES OF COORDINATOR OF
UNIVERSITY STUDENT DISCIPLINE**

1. Appointment

The Coordinator of University Student Discipline shall serve at the pleasure of the President.

2. Decision to Initiate Disciplinary Action

The Coordinator of University Student Discipline shall make the decision as to whether disciplinary action shall be taken.

3. Scheduling of Hearings

The Coordinator of University Student Discipline shall make the physical and scheduling arrangements for hearings held under these procedures.

4. Campus Representative

The Coordinator of University Student Discipline shall represent the campus in all hearings.

5. Notification to Victims of Sexual Assault or Physical Abuse

The Coordinator of University Student Discipline shall notify alleged victims of sexual assault or physical abuse of the results of any disciplinary action taken within three (3) working days following that disciplinary action. (Education Code Section 67143)

6. Notification to Victims of Crime of Violence

The Coordinator of University Student Discipline may notify alleged victims of a crime of violence of the results of any disciplinary action taken. The term "**crime of violence**" means (a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. (Section 1232g (b)(6) of Title 20 of the United States Code)

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ARTICLE V: PROHIBITED CONDUCT

1. Conduct -- Rules and Regulations

Any student found to have violated the Student Code is subject to the disciplinary sanctions in Article VI.

2. Violation of Law and Campus Discipline

At the campus's discretion, disciplinary proceedings may be instituted against a student charged with a violation of law which is also a violation of the Student Code, for example, if both violations result from the same factual situation, without regard to the pendency of civil litigation in court or criminal arrest and prosecution. Proceedings under these procedures may be carried out prior to, simultaneously with, or following civil or criminal proceedings off-campus. (Goldberg v. Regents of the University of California (1967) 248 Cal.App.2d 867))

ARTICLE VI: SANCTIONS

1. The following sanctions may be imposed upon any student found to have violated the Student Code:

- a. **Probation:** A period of time during which the privilege of continuing in student status is conditional. The conditions may include, but are not limited to, loss of specified privileges which a current student would otherwise be entitled to and an acknowledgement by the student that any additional violations of the Student Code will result in a more serious sanction.
- b. **Suspension:** Separation of the student from student status from the campus for a definite period of time, after which the student is eligible to return. Conditions for readmission may be specified.
- c. **Expulsion:** Permanent separation of the student from student status from the campus.

2. Multiple Sanctions

More than one of the sanctions listed above may be imposed for any single violation.

3. Denial of Access

After a hearing, any suspension or expulsion based on conduct which disrupted the orderly operation of a campus or other facility and which also violates a provision of a California statute may include denial of access to the campus or facility as a condition of such

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suspension or expulsion for the period of the suspension or in the case of expulsion for a period not to exceed one year. (Penal Code Section 626.2) A student who willfully and knowingly enters the campus or facility during the period for which access has been denied is guilty of a misdemeanor pursuant to Penal Code Section 626.2. In the case of a suspension, such entry may be grounds for further disciplinary action.

4. Denial of Admission or Readmission

Admission or readmission may be qualified or denied to any student found to have violated the Student Code. (Section 41303 of Title 5 of the California Code of Regulations)

5. Good Standing

Imposition of a sanction or sanctions or the denial or qualification of admission or readmission means that the student is not considered to be in good standing for admission purposes at any institution of the California State University during the term of the sanction. (Section 40601(g) of Title 5 of the California Code of Regulations)

6. Record of Discipline

Probation and suspension shall be made part of the student's academic record during the term of the probation or suspension. Expulsion shall be made part of the student's permanent academic record.

ARTICLE VII: INTERIM SUSPENSION

1. Grounds

The President may immediately impose an interim suspension where there is reasonable cause to believe that it is required to protect personal safety or property and to ensure the maintenance of order. (Section 41302 of Title 5 of the California Code of Regulations)

2. Notification

A student placed on interim suspension shall be given prompt notice of the charges and the opportunity for a hearing within ten (10) working days of the imposition of the suspension. (Section 41302 of Title 5 of the California Code of Regulations) The hearing shall be held pursuant to the provisions of Article IX of these procedures.

3. Denial of Presence on Campus

During the period of the interim suspension, the student shall not, without prior written permission of the President, enter any campus of the California State University other than to attend the hearing. Violation of any condition of interim suspension shall be grounds for expulsion. (Section 41302 of Title 5 of the California Code of Regulations)

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4. Hearing

If requested timely by the student, a hearing will be held to determine whether continued suspension pending a disciplinary hearing is required to protect personal safety or property and to ensure the maintenance of order. This hearing may also serve as a disciplinary hearing in accordance with the procedures outlined in Article IX, provided proper notification has been given as delineated in Article IX, Section 3.

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

Admission or readmission may be qualified or denied to any person who, while not enrolled as a student, commits acts which, were he or she enrolled as a student, would be the basis for disciplinary proceedings pursuant to Article V or Article VII of these procedures. Qualified admission or denial of admission in such case shall be determined by a hearing held pursuant to Article IX of these procedures. (Section 41302 of Title 5 of the California Code of Regulations)

ARTICLE IX: PROCEEDINGS

1. Investigation

- a. A complaint alleging that a student has violated the Student Code shall be directed to the Coordinator of University Student Discipline. Any complaint should be submitted as soon as possible after the event takes place.
- b. A complaint is not necessary for the Coordinator to determine that charges should be initiated.
- c. The Coordinator shall investigate each complaint filed and determine whether or not charges should be brought.

2. Conference

Except when the student refuses to cooperate, the Coordinator shall hold a conference with the student to obtain his or her response to the alleged misconduct and to determine whether the allegations of misconduct have merit and if they may be disposed of informally by mutual consent of the student charged and the Coordinator. The student may have another person present to observe and consult with. If the campus has elected to exclude attorneys from this part of the proceedings, the Coordinator holding the conference shall not be an attorney. In addition to the sanctions listed in Article VI, an agreement reached during this

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conference may include voluntary actions by the student charged including but not limited to work assignments, service to a campus, obtaining psychological counseling or compensation for loss, damage or injury.

3. Notice of Hearing

- a. If the allegations of misconduct have not been resolved by conference as provided in Section 2 of this Article and the Coordinator of University Student Discipline determines that formal disciplinary action should be taken, the Coordinator of University Student Discipline shall initiate the disciplinary action process by a written Notice of Hearing served in person or served by certified mail return receipt requested to the student charged at the last known address on campus records.
- b. The Notice of Hearing shall include the following:
 - 1) A statement of the specific subdivisions of the Student Code which the student is being charged with violating.
 - 2) A factual description of the conduct upon which the charges are based.
 - 3) A recommended sanction and notification that the hearing officer is not bound by the recommended sanction and may impose a more severe sanction than recommended by the campus.
 - 4) The date, time and place of the hearing.
 - 5) The office at the campus where additional information regarding the evidence may be obtained.
 - 6) Notification that the student may be accompanied at the hearing by an advisor of his or her choice, who may act on his or her behalf. Such notification must state whether the advisor may be an attorney. If the student's advisor may be an attorney, notification that the student must inform the Coordinator of University Student Discipline of the name and address of the student's attorney at least five (5) days prior to the hearing.
 - 7) Notification that the student charged may elect to waive his or her right to hearing by accepting the recommended sanction.
 - 8) Such information as notice of an immediate suspension and/or withdrawal of consent to remain on campus where such action is appropriate.
 - 9) A copy of these procedures or notification of where the student may obtain a copy without charge. If consent to remain on campus has been withdrawn from the student at the time the Notice of Hearing is sent, a copy of these procedures shall be enclosed with the notice.

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- c. The Notice of Hearing shall be served on the student at least ten (10) working days prior to the hearing. If all parties agree, the ten day period may be waived.
- d. The charges stated in the Notice of Hearing may be amended at any time. If the amendment would require the student to prepare a defense which is different from that required by the prior Notice of Hearing, any hearing which has been scheduled shall upon request be postponed for a reasonable time. If the charges are amended after a hearing has commenced, the Hearing Officer may postpone the hearing for a reasonable period of time.

4. Hearing

- a. All hearings held under these procedures shall be conducted according to the following:
 - 1) Hearings shall be closed to all persons other than the person conducting the hearing, the student charged, the Coordinator of University Student Discipline, a single advisor for the student charged, a single advisor for the Coordinator of University Student Discipline, the person designated to record the hearing and witnesses while they are testifying.
 - 2) The student may be accompanied by one advisor of his or her choice, who may act on his or her behalf. If the campus has elected to exclude attorneys from this part of the proceedings, the advisor may not be an attorney.
 - 3) The Coordinator of University Student Discipline representing the campus may be accompanied by one advisor of his or her choice. If the campus has elected to exclude attorneys from this part of the proceedings, neither the Coordinator representing the campus at the hearing or the Coordinator's advisor may not be an attorney.
 - 4) The campus and the student charged shall have the opportunity of presenting witnesses, subject to the right of cross examination as well as questioning by the Hearing Officer. If the student charged elects to testify, he or she shall be subject to cross examination and questioning by the Hearing Officer.
 - 5) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. No evidence other than that received at the hearing shall be considered by the Hearing Officer.

- 6) The Hearing Officer shall make all rulings on matters relating to the conduct of the hearing, including matters regarding admission of evidence. Any evidence deemed relevant by the Hearing Officer shall be admitted. Unduly repetitious evidence shall be excluded.
 - 7) A tape recording shall be kept of the hearing. The student charged may, at his or her own expense, request a copy of such recording. No tape recording by the student charged or other persons at the hearing shall be permitted. However, the student charged may, at his or her own expense, furnish a certified court reporter provided that the campus shall be permitted to make copies of the transcript at its own expense.
 - 8) The student charged shall not be found to have violated the Student Code solely because he or she fails to appear at the hearing. If the student charged does not appear, the hearing shall proceed without him or her and a decision shall be rendered on the evidence presented.
 - 9) Arguments by the student charged or his or her advisor concerning the legal (as distinguished from factual) applicability, or legal validity of any provision with which the student is charged, or of these procedures shall not be addressed to the Hearing Officer, but to the President in writing within three (3) working days following the conclusion of the hearing. The President shall seek advice on the matter from the Office of General Counsel. Such advice shall be considered by the President before a final decision is rendered.
 - 10) Where the person testifying is an alleged victim of sexual or physical assault which is the basis for the disciplinary action, that person may be accompanied at the hearing by another person. The other person is not permitted to speak or to participate directly in the hearing. Cross examination of the alleged victim shall be limited to the alleged incident leading to the charge and the events surrounding the charge.
 - 11) The Hearing Officer is responsible for maintaining order, and may establish such rules as are necessary or appropriate to conducting a fair hearing. The Hearing Officer shall not permit any person to be subjected to abusive treatment. The Hearing Officer may eject or exclude anyone who refuses to be orderly.
- b. Where more than one student is charged with conduct arising out of a single occurrence or out of connected multiple occurrences, if the Coordinator of University Student Discipline and the students charged consent, a single hearing may be held for all of the students so charged. Students may request that their case be consolidated with others, or separated from others. The Coordinator of University Student Discipline shall make determinations regarding consolidation. All such determinations shall be subject to revision by the Hearing Officer. In the

event of such revision, all cases affected shall be rescheduled for hearing. The separation of one or more cases from a group of cases previously set for a consolidated hearing shall not be considered to affect the remaining cases in the group.

- c. At any time during the hearing process, the student charged may elect to waive the hearing and accept a sanction recommended by the Coordinator of University Student Discipline. The waiver and acceptance of the recommended sanction shall be in writing.

5. Recommendation of the Hearing Officer

- a. After the hearing, the Hearing Officer shall make findings of fact and conclusions about whether the facts demonstrate a violation of the Student Code with which the student is charged. The Hearing Officer's determination shall be made on the basis of whether it is more likely than not that the student charged violated the Student Code (i.e., by a preponderance of the evidence).
- b. After having made its determination, the Hearing Officer shall submit a written report to the President which includes a determination as to whether the student charged violated the Student Code and the Hearing Officer's recommended sanction, if any. The Hearing Officer's report shall be submitted to the President within ten (10) working days of the conclusion of the hearing.

6. Presidential Action

- a. After reviewing the Hearing Officer's report, the President shall make the final decision regarding disciplinary action. The President may impose the sanction recommended, adopt a lesser sanction, refer the matter back to the Hearing Officer for further findings on specified issues or after reviewing the entire record may adopt a more severe sanction. If the President decides to adopt a more severe sanction, the President shall articulate the reasons for the more severe sanction in his or her decision. The President normally shall render a decision within five (5) working days of receipt of the Hearing Officer's report.
- b. The President shall cause notification of his or her decision to be delivered to the student charged. The notification shall be delivered in person or sent by certified mail return receipt requested to the student charged. Notices addressed to the student at the last known address on campus records and deposited in the United States mail, postage prepaid, shall be presumed to have been received by the student. The report of the Hearing Officer shall be made available to the student charged upon request.

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