

# ***STUDENT DISCIPLINE MANUAL***



*Office of the General Counsel  
The California State University*

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## **I. Introduction**

This Manual provides a comprehensive explanation of the student disciplinary procedures applicable to all CSU campuses. It references applicable law, policies and student disciplinary procedures, and was developed to assist CSU students, administrators and faculty who may become involved in student discipline.

## **II. Overview of CSU Student Discipline**

### **A. Statutory Authority**

The Trustees of the California State University are authorized to establish their own student disciplinary rules pursuant to Education Code §§ 66300 and 89030. Additionally, § 66017 provides specific authorization for the Trustees to establish procedures to take more prompt action against students, faculty and staff for willfully disrupting the orderly operation of the campus. This statute also authorizes immediate suspension where necessary in order to protect persons and property and to maintain order. Education Code § 69810, *et seq.*, govern the forfeiture of state aid to students based on either conviction of a public offense or a campus student disciplinary determination that the student willfully and knowingly disrupted the peaceful conduct of the activities of a campus. The text of these code sections can be found on the OGC website at: <http://www.calstate.edu/gc/resources.shtml>.

### **B. CSU Regulations**

The Trustees have adopted student disciplinary regulations in § 41301, *et seq.*, Title 5, California Code of Regulations, which set out the causes for disciplinary charges:

(1) Dishonesty, including:

(A) Cheating, plagiarism, or other forms of academic dishonesty that are intended to gain unfair academic advantage.

(B) Furnishing false information to a University official, faculty member, or campus office.

(C) Forgery, alteration, or misuse of a University document, key, or identification instrument.

(D) Misrepresenting one's self to be an authorized agent of the University or one of its auxiliaries.

(2) Unauthorized entry into, presence in, use of, or misuse of University property.

(3) Willful, material and substantial disruption or obstruction of a University related activity, or any on-campus activity.

(4) Participating in an activity that substantially and materially disrupts the normal operations of the University, or infringes on the rights of members of the University community.

(5) Willful, material and substantial obstruction of the free flow of pedestrian or other traffic, on or leading to campus property or an off campus University related activity.

(6) Disorderly, lewd, indecent, or obscene behavior at a University related activity, or directed toward a member of the University community.

(7) Conduct that threatens or endangers the health or safety of any person within or related to the University community, including physical abuse, threats, intimidation, harassment, or sexual misconduct.

(8) Hazing, or conspiracy to haze. Hazing is defined as any method of initiation or pre-initiation into a student organization or student body, whether or not the organization or body is officially recognized by an educational institution, which is likely to cause serious bodily injury to any former, current, or prospective student of any school, community college, college, university or other educational institution in this state (Penal Code 245.6), and in addition, any act likely to cause physical harm, personal degradation or disgrace resulting in physical or mental harm, to any former, current, or prospective student of any school, community college, college, university or other educational institution. The term "hazing" does not include customary athletic events or school sanctioned events.

Neither the express or implied consent of a victim of hazing, nor the lack of active participation in a particular hazing incident is a defense. Apathy or acquiescence in the presence of hazing is not a neutral act, and is also a violation of this section.

(9) Use, possession, manufacture, or distribution of illegal drugs or drug related paraphernalia, (except as expressly permitted by law and University regulations) or the misuse of legal pharmaceutical drugs.

(10) Use, possession, manufacture, or distribution of alcoholic beverages (except as expressly permitted by law and University regulations), or public intoxication while on campus or at a University related activity.

(11) Theft of property or services from the University community, or misappropriation of University resources.

(12) Unauthorized destruction, or damage to University property or other property in the University community.

(13) Possession or misuse of firearms or guns, replicas, ammunition, explosives, fireworks, knives, other weapons, or dangerous chemicals (without the prior authorization of the campus president) on campus or at a University related activity.

(14) Unauthorized recording, dissemination, or publication of academic presentations (including handwritten notes) for a commercial purpose.

(15) Misuse of computer facilities or resources, including:

(A) Unauthorized entry into a file, for any purpose.

(B) Unauthorized transfer of a file.

(C) Use of another's identification or password.

(D) Use of computing facilities, campus network, or other resources to interfere with the work of another member of the University community.

(E) Use of computing facilities and resources to send obscene or intimidating and abusive messages.

(F) Use of computing facilities and resources to interfere with normal University operations.

(G) Use of computing facilities and resources in violation of copyright laws.

(H) Violation of a campus computer use policy.

(16) Violation of any published University policy, rule, regulation or presidential order.

(17) Failure to comply with directions, or interference with, any University official or any public safety officer while acting in the performance of his/her duties.

(18) Any act chargeable as a violation of a federal, state, or local law that poses a substantial threat to the safety or well being of members of the University community, to property within the University community or poses a significant threat of disruption or interference with University operations.

(19) Violation of the Student Conduct Procedures, including:

(A) Falsification, distortion, or misrepresentation of information related to a student discipline matter.

(B) Disruption or interference with the orderly progress of a student discipline proceeding.

(C) Initiation of a student discipline proceeding in bad faith.

(D) Attempting to discourage another from participating in the student discipline matter.

(E) Attempting to influence the impartiality of any participant in a student discipline matter.

(F) Verbal or physical harassment or intimidation of any participant in a student discipline matter.

(G) Failure to comply with the sanction(s) imposed under a student discipline proceeding.

(20) Encouraging, permitting, or assisting another to do any act that could subject him or her to discipline.

These regulations are located at <http://ccr.oal.ca.gov/linkedslice/default.asp?SP=CCR-1000&Action=Welcome>. They also authorize the denial of admission or readmission to students who commit acts subject to disciplinary action; provide that tuition and fees shall not be refunded during the period of a suspension or expulsion; authorize the President to place emergency regulations into effect during periods of campus emergency; and authorize the Chancellor to revise the Code of Student Disciplinary Procedures that is currently Executive Order No. 1043. Executive Order No. 1043 can be found at: <http://www.calstate.edu/eo/>.

### **C. Overview of Executive Order No. 1043**

Executive Order No. 1043 sets forth the systemwide procedures for implementing student discipline and defines the terms used in § 41301 et seq.

The following is a summary of Executive Order No. 1043:

Step 1: A complaint is filed with, or information is obtained by, the student conduct administrator regarding inappropriate student conduct.

Step 2: The student conduct administrator investigates the matter.

Step 3: If investigation shows that further action is warranted, the student conduct administrator holds a conference with the student(s) charged. If resolution is reached, it is put in writing and signed by the university and the student(s). This ends the process.

Step 4: If a resolution is not reached, the student conduct administrator prepares a Notice of Hearing and sends it to the student charged. If the student accepts the recommended sanction, that acceptance is put in writing and signed by the student conduct administrator and the student. This ends the process.

Step 5: If the recommended sanction is not accepted, the hearing is held.

- Step 6: The Hearing Officer submits his or her recommendation to the President.
- Step 7: After reviewing the Hearing Officer's recommendation, the President makes the final decision regarding disciplinary action.
- Step 8: The President notifies the student of the University's decision.
- Step 9: If the matter involves sexual misconduct or a crime of violence, the student conduct administrator may be required to notify the alleged victim of the results of the disciplinary process.<sup>1</sup>

#### **D. Time Limits for Initiating Student Discipline**

Executive Order No. 1043 (Article IV, Section 1a.) specifies that a complaint alleging that a student has violated the student code of conduct should be submitted to the student conduct administrator as soon as possible. Student disciplinary proceedings should be pursued as soon as practicable so that evidence of the alleged misconduct does not become stale or lost, and in fairness to the students to resolve the matter promptly.

#### **E. Confidentiality**

Records created during the student disciplinary process are "education records" under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. § 1232g), and thus are generally protected from production to third parties without the written consent of the student charged. Failure to comply with FERPA may subject the campus to loss of federal funding. The Higher Education Opportunity Act requires a campus to notify an alleged victim of "a non-forcible sex-offense" or a "crime of violence," (as it defines those terms), where the victim has made a request in writing for the results of the disciplinary proceeding (34 C.F.R. § 99.39). However, the California Information Practices Act (Civil Code § 1798, *et seq.*) prohibits the disclosure of all "personal information" without consent, even in a student disciplinary matter. Therefore, it is advisable to notify the victim of these offenses only of the sanction imposed or that "the charge was not sustained."

Any alleged victim who is notified of the results of a disciplinary proceeding taken under the crime of violence exception must be advised of the requirement to keep the results confidential. The alleged victim should also be advised that failure to keep the results confidential may result in formal disciplinary action by the University, as well as possible legal proceedings for invasion of privacy.

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<sup>1</sup> Due to the conflict of law on this topic, please see the more detailed instructions in Section E. below.

## **F. Academic Sanctions v. Student Discipline**

Issues relating to academic disqualification are separate from the student disciplinary procedures discussed in this Manual. Academic disqualification includes the award of a failing grade; denial of a degree; revocation of a degree previously awarded; and/or disqualification from participating in a course, clinical or other academic program. Each campus is required to have a grade appeal procedure utilizing the minimum standards set forth in Executive Order No. 1037 [<http://www.calstate.edu/eo/>] in addition to student disciplinary procedures. Degree revocation is a serious matter and should be done carefully with guidance from the Office of General Counsel.

In the classroom setting, each professor has the authority and responsibility to establish rules, maintain order and to eject students for violation of the rules or misconduct. Misconduct warranting more than a single ejection from a class should be referred by the professor to the student conduct administrator for appropriate action as it may constitute a violation of the student code of conduct.

## **III. Developing General Campus Policies and Procedures**

### **A. Defining the Role of Attorneys**

Executive Order No. 1043 provides that the use of attorneys during the student discipline proceedings is discretionary. Experience has taught that the presence of attorneys changes the nature of the proceedings, and case law establishes that attorneys are not required to ensure fairness or due process. In Osteen v. Henly, 13 F.3d 221 (7th Circuit 1993), a student expulsion case, the court addressed the student's right to have an attorney and held that:

Even if a student has a constitutional right to consult counsel . . . we do not think that he is entitled to be represented in the sense of having a lawyer who is permitted to examine or cross-examine witnesses, to submit and object to documents to address the tribunal, and otherwise to perform the traditional function of a trial lawyer. To recognize such a right would force student disciplinary proceedings into the mold of adversary litigation. Id. at 225.

*See also* Goldberg v. Regents of the University of California (1967) 248 Cal.App.2d 867, 881.

Executive Order No. 1043 provides that each President determines whether and how attorneys may be used in student disciplinary proceedings on the campus and if permitted, whether attorneys may be used in the conference and/or hearing stages. The rules defining the use of attorneys involve a broad campus policy determination, and may not be changed on a case-by-case basis. The policy should be posted and readily accessible so that students are on notice of the campus rules. Exclusion of attorneys from the meeting and hearing processes does not prohibit either the campus or the student charged from consulting an attorney for advice before, during or after those sessions.

If the campus policy allows the presence of attorneys, both the student and the campus are permitted to have counsel at the hearing. Reciprocity in the policy ensures fairness. If the student has counsel at the hearing the campus may, but is not required to, be represented by the Office of General Counsel. Note also that if the student conduct administrator is a licensed attorney (active or inactive) the campus policy must provide that students may also use attorneys.

**B. Assigning Student Conduct Administrator(s)**

Pursuant to Executive Order No. 1043, the President is responsible for appointing one or more campus student conduct administrators who shall be responsible for handling student disciplinary cases. The student conduct administrator serves at the pleasure of the President and is responsible for gathering the evidence, interviewing witnesses, conducting conferences with the student(s) charged, preparing notices of hearing, negotiating settlements and representing the campus during hearings.

**C. Appointing Hearing Officers**

The President is also required to appoint one or more Hearing Officers, who may be campus officials, attorneys who are admitted to the practice of law in California, or administrative law judges from the Office of Administrative Hearings. Any person who is a percipient witness to the events giving rise to a particular case is ineligible to serve as the Hearing Officer in that case.

**D. Coordinating Student Discipline with Faculty**

A violation of the student code of conduct in a classroom or other academic program is covered by the student disciplinary procedures. Therefore, any professor who observes or receives a report of misconduct occurring in his or her classroom should immediately report it to the student conduct administrator. Each campus should develop procedures for informing the faculty of how to appropriately respond to classroom misconduct.

**IV. Proceeding with the Individual Case**

**A. Report of a Violation**

Any person may file a complaint with the student conduct administrator alleging that a student has violated the student code of conduct. Once a complaint has been received, the student conduct administrator is responsible for determining whether or not charges should be brought. However, the student conduct administrator is not prohibited from initiating an investigation if no formal complaint has been filed, and may investigate any matter which the student conduct administrator believes involves a violation of the student code of conduct. If the incident involves allegations of sexual assault, the alleged victim must be informed of how to contact the authorities (20 U.S.C.A §1092).

## **B. Gathering the Initial Evidence**

A disciplinary investigation requires careful evaluation of the evidence related to the charges. All accessible persons with potential information should be interviewed and all relevant evidence should be considered. It is permissible to gather the initial facts (interview primary witnesses, review immediately accessible documents, etc.) prior to “working up” the entire case for hearing. If an initial determination can be made that misconduct “more than likely” occurred, it is appropriate to call in the accused student for a meeting and interview that also operates as the informal conference.

## **C. Immediate Removal From Campus**

Two procedures are available to immediately remove a student from campus. Both should be used only in extraordinary situations.

1. The president or the president’s designee may immediately impose an interim suspension where there is reasonable cause to believe that it is necessary to protect personal safety or property and to ensure the maintenance of order (§ 41302, Title 5, California Code of Regulations and Executive Order No. 1043, Article VI).

2. Similarly, the president or the president’s designee may issue a withdrawal of consent for a student to remain on campus whenever there is reasonable cause to believe that such person has “willfully disrupted” the orderly operation of the campus (Penal Code § 626.4).

Both procedures require prompt notice and opportunity for hearing as to whether or not the exclusion should remain in effect. The initial period of exclusion is limited. Violation of an interim suspension subjects the student to expulsion. Violation of a withdrawal of consent subjects a student to criminal prosecution for a misdemeanor. In appropriate cases, the procedures can be combined to increase the penalties the student would face for violation of the exclusion. Appendix A contains a more detailed comparison of the two procedures, and Appendix B is a sample Notice of Withdrawal of Consent. A student who willfully and knowingly enters the campus when access has been denied under these sections is subject to criminal prosecution pursuant to Penal Code § 626.2.

## **D. Factors to Consider in Initiating Discipline**

1. Is there evidence that the student knew or should have known that the conduct engaged in was a violation of the Student Conduct Code?
2. Has a conference been held in which the student was informally advised of the pending charges; and, has the student been given the opportunity to respond?
3. Has there been a thorough and fair investigation of the alleged incidents?
4. Is there sufficient evidence to establish that the incidents occurred and that they constitute an appropriate basis for initiating student discipline?

5. Are the campus standards of student conduct being applied fairly and without discrimination?

#### **E. Conducting the Conference**

Prior to proceeding to a hearing, Executive Order No. 1043 provides that the student conduct administrator shall hold a conference with the student.

The conference serves a variety of purposes. It permits the student conduct administrator to informally advise the student of what factual incidents are alleged to have occurred. It also provides the student an opportunity to explain the matter from his/her perspective; to inform the student conduct administrator of any witnesses or documents that corroborate the student's version of the events; and to discuss any aggravating or mitigating circumstances. Besides helping to clarify the facts, the conference provides an opportunity to educate the student about why the conduct was inappropriate. It also provides an opportunity to negotiate a resolution. If the campus has elected to exclude attorneys from this part of the proceedings, the student conduct administrator holding the conference may not be an attorney and the student may not bring an attorney to the conference.

#### **F. Negotiating a Settlement Agreement**

If a settlement is reached during the conference, it should be put in writing and contain the student's agreement to waive the right to a hearing. The settlement agreement is not limited to the imposition of probation, suspension or expulsion, and may include any voluntary actions agreed to by the student charged, including but not limited to work assignments documentation of completed psychological counseling or compensation for loss, damage or injury to the victim, etc. Appendix C contains a sample Settlement Agreement.

#### **G. Further Investigation of Charges**

If the case does not settle at the conference, it may be because the student disputes the allegations, believes the proposed sanction is too harsh, or because the student refused to attend the conference. If the student disputes the factual allegations, the student conduct administrator should pursue all reasonable leads provided by the student that may corroborate the student's version of the facts. If the student refused to attend the conference, the student conduct administrator should review the evidence before proceeding to a hearing to insure that sufficient evidence has been gathered to prove the allegations.

Student disciplinary hearings are not bound by technical rules of evidence. However, knowledge of the basic principles is useful to understand the different types of evidence and how to gather and evaluate it.

Basic fairness requires that no case proceed to a hearing unless the student conduct administrator has made a careful and independent determination that sufficient evidence exists to establish misconduct.

California Evidence Code section 140 defines “evidence” as “testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact.” Evidence should be distinguished from conclusions. In student disciplinary hearings, the ultimate conclusion to be determined is whether or not one or more of the causes set forth in § 41301 of Title 5 have been established. “Proof” is defined by Evidence Code section 190 as “the establishment by evidence of a requisite degree of belief concerning a fact in the mind of the trier of fact.” In student disciplinary hearings, the campus bears the burden of proof and must establish the allegations by a preponderance of the evidence. In other words, the campus must be prepared to prove that it is “more likely than not” that the allegations contained in the Notice are true.

To prevail at the hearing, the student conduct administrator must (1) describe specific incidents in the Notice of Hearing which, if true, constitute cause for discipline under § 41301; and (2) present sufficient evidence at the hearing to persuade the Hearing Officer that the student accused “more likely than not” committed the acts as set forth in the Notice of Hearing.

Before proceeding to hearing, the student conduct administrator should gather all the evidence bearing on (1) whether or not the alleged misconduct occurred; and (2) the consequences of the alleged misconduct. This would include:

1. Documents: Any relevant documents including copies of all laws and policy statements which may have been violated, witness statements, receipts and correspondence relating to the alleged incidents, etc.

2. Witness statements: There are three methods a student conduct administrator may use to obtain statements from witnesses:

- a. Prepare statements based on the interview of the witness and have the witness review and sign the statement as being true and correct to the best of the witness’s knowledge.
- b. Prepare a report based on the interview of the witness.
- c. Request the witness to write and sign a statement.

3. Physical evidence: All physical evidence (items stolen, papers plagiarized, illegal substances, the “smoking gun,” etc.) should be preserved. Maintaining and documenting the “chain of custody” is also important to establish that the evidence has not been tampered with.

4. Demonstrative evidence: Photographs, charts, spreadsheets, etc. should be prepared when they can help to establish whether or not the misconduct occurred.

## **H. Drafting the Notice of Hearing**

If after any necessary further investigation the student conduct administrator determines that formal disciplinary action should be taken, the student conduct administrator will issue a Notice of Hearing in order to proceed. Appendix D contains a sample Notice of Hearing.

Executive Order No. 1043 (Article IV, Section 3a.) requires that the Notice be sent to the student electronically, to the student's assigned e-mail address linked to the account provided by the CSU (*i.e.*, "xxx.edu"). Until June 30, 2010, the Notice must also be served on the student in person or by traceable (*e.g.*, certified) mail to the last address the student has on file with the campus.

Executive Order No. 1043 (Article IV, Section 3b.) requires that the Notice of Hearing include the following:

1. The section(s) of the Student Conduct Code that the student is being charged with violating.
2. A factual description of the student's conduct that forms the basis for the charges.
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 which should generally be no sooner than 10 days after the student is served with the Notice of Hearing.
6. The location on the campus where the student can view his or her discipline file.
7. Notification that the student may be accompanied at the hearing by an advisor. Such notification must state whether the advisor may be an attorney. If the student's advisor may be an attorney, the notice shall include that the student must inform the student conduct administrator of the attorney's name and address at least five working days prior to the hearing.
8. Notification that the student can waive his or her right to hearing by accepting the proposed sanction.
9. Notification of any immediate suspension and/or withdrawal of consent to remain on campus.
10. A copy of Executive Order No. 1043 and any relevant campus procedures or notification of where the student may obtain a copy at no cost. If consent to

remain on campus has already been withdrawn by the time the notice of hearing is sent, a copy of the documents must be enclosed with the Notice.

### **I. Determining the Recommended Sanction**

Before deciding on a recommended sanction, the student conduct administrator should consider the purpose of the sanction. It may educate the student regarding the inappropriateness of the conduct; punish the student for the conduct; attempt to influence the student's future conduct; or remove the student from the University community. In determining the sanction, the student conduct administrator should consider whether or not the sanction is reasonably related to the seriousness of the student's conduct, and should also consider the extent of harm to the University community, the circumstances surrounding the misconduct and the likelihood of its recurrence. Finally, the student conduct administrator should consider the consistency of the sanction with other disciplinary cases at the campus.

In extraordinary cases, a student may be denied access to the campus in addition to being suspended or expelled. See Section C above.

### **J. Scheduling the Hearing**

The student conduct administrator is responsible for notifying the student(s) of the time and date of the hearing(s) sufficiently in advance to provide the student(s) with a reasonable opportunity to prepare a defense and contact witnesses. In the absence of extraordinary circumstances, it is recommended that the hearing be scheduled no sooner than ten working days after the Notice of Hearing is served on the student. Hearing dates do not need to be changed for the convenience of the student advisor. It is the student's responsibility to choose an advisor who is available for the hearing date as provided in the Notice of Hearing.

### **K. The Hearing**

Although Student conduct hearings relate to serious matters, the proceedings are intended to be neutral and educational, rather than adversarial and court-like, in tone.

Education Code 89030 gives authority to the Trustees to adopt appropriate rules and regulations to govern the CSU. This section exempts CSU from having to conform to Government Code § 11340 et seq. that otherwise would require formal evidentiary hearings

### **L. The Student Conduct Administrator's Role at the Hearing**

The student conduct administrator's role at the hearing is to present the evidence that demonstrates the student committed one or more violations of the Student Code of Conduct. This includes calling, one by one, each witness and any complainant to testify regarding what they observed. In addition, the student conduct administrator should present all documentary and other evidence tending to prove that the alleged incidents occurred. The student conduct administrator can also question any witnesses called by the student, including the student if the student testifies. The student conduct administrator may request permission from the Hearing

Officer to make a closing statement to explain what the evidence has proved and why the recommended sanction is appropriate.

### **M. The Student and Student Advisor's Role at the Hearing**

The student may be accompanied by one advisor of his or her choice to provide support during the hearing. The student's advisor may advise the student in the preparation and presentation of the defense but may not present the student's defense. (Executive Order No. 1043, Article IV, Section 4b.). It is the student's responsibility to call witnesses and present evidence that proves that the alleged incidents are unfounded. The student can also question any witnesses called by the campus and may request permission from the Hearing Officer to make a closing statement to explain what the evidence has proved and why the recommended sanction is not appropriate. For those campuses that permit attorneys at student disciplinary hearings, an attorney may advise before and during breaks at the hearing, but may not present the student's defense.

### **N. The Hearing Officer's Role**

#### **1. Conducting the Hearing**

The Hearing Officer is responsible for conducting the hearing in accordance with Article IV, Section 4 of Executive Order No. 1043. The Hearing Officer is also responsible for maintaining order in the proceedings, providing both the University and the student the opportunity to present their case, and determining if any evidence should be excluded as irrelevant, unreliable or unnecessarily repetitive.

#### **2. Tape Recording the Hearing**

The Hearing Officer is responsible for insuring that the proceedings are tape recorded, and for maintaining personal custody of those recordings until the recommendation and report is issued to the President.

#### **3. Preparing Findings of Fact and Conclusions**

After the hearing is completed, the Hearing Officer is required to make findings of fact and conclusions about whether the facts demonstrate a violation of those sections of the Student Code of Conduct with which the student is charged (Executive Order No. 1043, Article IV, Section 5). The report should include a description of the relevant facts that were proved at the hearing, an analysis of whether or not those facts establish a violation of the Student Code of Conduct and a conclusion regarding what disciplinary sanction, if any, should be imposed. The Hearing Officer's written recommendation, along with all materials offered at the hearing and the recording, must be submitted to the President within ten working days of the conclusion of the hearing. Appendix E contains a sample Findings of Fact and Conclusions.

## **O. Presidential Action**

The President is responsible for making the final decision on disciplinary action after reviewing the Hearing Officer's written report. Appendix F contains a sample final decision letter.

If the President wishes to impose a more severe sanction than that recommended by the Hearing Officer, he or she may only do so after having reviewed the entire record (the report, all evidence offered at the hearing and the recording). The President must articulate the reasons why the more severe sanction is appropriate.

Executive Order No. 1043 (Article IV, Section 6) requires that the Final Decision be issued by the President within five working days after receipt of the Hearing Officer's report, and must be sent to the student electronically, to the student's assigned e-mail address linked to the account provided by the CSU (*i.e.*, "xxx.edu"). Until June 30, 2010, the Final Decision must also be served on the student in person or by traceable (*e.g.*, certified) mail to the last address the student has on file with the campus. After the Final Decision has been sent, the Hearing Officer's report is available for review by the student charged within a reasonable time upon request.

The President's decision is final. There is no right to appeal within the CSU. The issuance of the President's decision ends the CSU's administrative remedies available to the student.

## Appendix A

### Comparison of Interim Suspension with Withdrawal of Consent

#### Interim Suspension

(Title 5, CCR § 41302, and Executive Order No. 1043, Article VI)

Who issues: President

Applicable to: Students

#### Conditions for:

1. Reasonable cause to believe such an immediate suspension is
  2. required in order to protect lives or property
- AND**
3. required to insure the maintenance of order

#### Procedures to follow:

1. Prompt notice of charges given to student
2. Opportunity for hearing within 10 days\* of the imposition of interim suspension (\*normally within 2 working days)

#### Effect: During period of suspension:

1. Shall not enter any campus of CSU
2. May enter specific campus with prior written permission of President or designee of such campus.
3. May enter to attend a hearing.

Violation: Grounds for expulsion Issues at hearing: Whether continued suspension pending or disciplinary Hearing is required (1) to protect lives or property and (2) to insure the maintenance of order.

#### Withdrawal of Consent

(Penal Code § 626.4)

Who issues: President (if designee, see #6 below)

Applicable to: Any person

#### Conditions for:

1. Reasonable cause to believe
2. Person has willfully disrupted the orderly operation of the campus

#### Procedures to follow:

1. Notify person that consent to remain on campus is withdrawn and serve notice to last given address by registered or certified mail.
2. Consent may not be withdrawn for longer than 14 days from date consent initially withdrawn.
3. Person may submit written request for a hearing within the 2 week period. Written request must state address to which hearing notice to be sent.
4. Upon request, President shall grant hearing not later than 7 days within date of receipt of request.
5. Upon request (as above), President shall immediately mail written notice of time, place, date of hearing.
6. Additional procedures if designee of President withdraws consent [see P.C. § 626.4(b)]

#### Effect: During period of withdrawal of consent:

1. Shall not willfully and knowingly enter or remain on the campus.
2. May enter or remain on the campus for sole purpose of applying to the President for reinstatement of consent.
3. May enter or remain on the campus for the sole purpose of attending a hearing on the withdrawal of consent.

Violation: Guilty of a misdemeanor [penalties specified in subdivision (f)]. Issues at hearing: Whether the presence of person on campus will constitute a substantial and material threat to orderly operation of campus such that withdrawal of consent should be continued to up to a maximum of 14 days from date consent was initially withdrawn.

## Appendix B

### Sample Notice of Withdrawal of Consent

[Served by Registered or Certified mail]

To: **[Student's name]**

From: President **[name]**

Date: \_\_\_\_\_

Your consent to remain on campus has been withdrawn for up to fourteen days. You have ten minutes to leave the grounds of (**name of campus**). If after ten minutes you are found on the campus, you will be subject to arrest for violation of Penal Code § 626.4, which is a misdemeanor. A copy of Penal Code § 626.4 is attached.

You have the right to submit a written request for a hearing to determine whether the withdrawal of consent should continue for the full fourteen days. A request for a hearing must be submitted in writing to (**individual's name, title, and address**). If you have any questions concerning this action, you may telephone (**individual's name**) at (**telephone number**).

Attachment

## Penal Code 626.4

### **626.4 Notice of withdrawal of consent; report; action on report; reinstatement of consent; hearing; unlawful entry upon campus or facility; punishment**

(a) The chief administrative officer of a campus or other facility of a community college, a state university, the university, or a school, or an officer or employee designated by the chief administrative officer to maintain order on such campus or facility, may notify a person that consent to remain on the campus or other facility under the control of the chief administrative officer has been withdrawn whenever there is reasonable cause to believe that such person has willfully disrupted the orderly operation of such campus or facility.

(b) Whenever consent is withdrawn by any authorized officer or employee, other than the chief administrative officer, such officer or employee shall as soon as is reasonably possible submit a written report to the chief administrative officer. The report shall contain all of the following:

(1) The description of the person from whom consent was withdrawn, including, if available, the person's name, address, and phone number.

(2) A statement of the facts giving rise to the withdrawal of consent.

If the chief administrative officer or, in the chief administrative officer's absence, a person designated by him or her for this purpose, upon reviewing the report, finds that there was reasonable cause to believe that such person has willfully disrupted the orderly operation of the campus or facility, he or she may enter written confirmation upon the report of the action taken by the officer or employee. If the chief administrative officer, or in the chief administrative officer's absence, the person designated by him or her, does not confirm the action of the officer or employee within 24 hours after the time the consent was withdrawn, the action of the officer or employee shall be deemed void and of no force or effect, except that any arrest made during such period shall not for this reason be deemed not to have been made for probable cause.

(c) Consent shall be reinstated by the chief administrative officer whenever he or she has reason to believe that the presence of the person from whom consent was withdrawn will not constitute a substantial and material threat to the orderly operation of the campus or facility. In no case shall consent be withdrawn for longer than 14 days from the date upon which consent was initially withdrawn. The person from whom consent has been withdrawn may submit a written request for a hearing on the withdrawal within the two week period. The written request shall state the address to which notice of hearing is to be sent. The chief administrative officer shall grant such a hearing not later than seven days from the date of receipt of the request and shall immediately mail a written notice of the time, place, and date of such hearing to such person.

(d) Any person who has been notified by the chief administrative officer of a campus or other facility of a community college, a state university, the university, or a school, or by an officer or employee designated by the chief administrative officer to maintain order on such campus or facility, that consent to remain on the campus or facility has been withdrawn pursuant to subdivision (a); who has not had such consent reinstated; and who willfully and knowingly enters or remains upon such campus or facility during the period for which consent has been withdrawn is guilty of a misdemeanor. This subdivision does not apply to any person who enters or remains on such campus or facility for the sole purpose of applying to the chief administrative officer for the reinstatement of consent or for the sole purpose of attending a hearing on the withdrawal.

(e) This section shall not affect the power of the duly constituted authorities of a community college, a state university, the university, or a school, to suspend, dismiss, or expel any student or employee at the college, state university, university or school.

(f) Any person convicted under this section shall be punished as follows:

(1) Upon a first conviction, by a fine of not exceeding five hundred dollars (\$500), by imprisonment in the county jail for a period of not more than six months, or by both such fine and imprisonment.

(2) If the defendant has been previously convicted once of a violation of any offense defined in this chapter or Section 415.5, by imprisonment in the county jail for a period of not less than 10 days or more than six months, or by both such imprisonment and a fine of not exceeding five hundred dollars (\$500), and shall not be released on probation, parole, or any other basis until he or she has served not less than 10 days.

(3) If the defendant has been previously convicted two or more times of a violation of any offense defined in this chapter or Section 415.5, by imprisonment in the county jail for a period of not less than 90 days or more than six months or by both such imprisonment and a fine of not exceeding five hundred dollars (\$500), and shall not be released on probation, parole, or any other basis until he or she has served not less than 90 days.

(g) This section shall not affect the rights of representatives of employee organizations to enter, or remain upon, school grounds while actually engaged in activities related to representation, as provided for in Chapter 10.7 (commencing with § 3540) of Division 4 of Title 1 of the Government Code.

(Added by Stats. 1969, c. 1424, p. 2921, §4, eff. Sept. 4, 1969. Amended by Stats. 1970, c. 102, p. 319, § 570; Stats. 1974, c. 988, p. 2071, § 3; Stats. 1974, c. 1183, p. 2531, § 3; Stats. 1983, c. 143, § 205.)

Links to Penal Code sections: <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pen&group=00001-01000&file=626-626.11>

Appendix C

**Sample Settlement Agreement**

THIS AGREEMENT is between (**student's name**) and (**campus name**)

On (**date**), the University charged (**student's name**) with violating subsections (\_\_\_), (\_\_\_), and (\_\_\_) of § 41301 of Title 5 of the California Code of Regulations.

The parties desire to avoid the expense, inconvenience, and uncertainty attendant upon continued proceedings in this matter;

THEREFORE, the parties agree to the following:

1. Without admitting that (**student's name**) engaged in the conduct described in the University's charges, (**student's name**) waives the right to contest the University's charges.

2. Without admitting that (**student's name**) engaged in the conduct described in the University's charges, (**student's name**) agrees to the following:

a. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. (**Insert statement of actions student agrees to take**) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. (**Student's name**) understands that if there are any proven violations of this agreement, (**Student's name**) will be subject to further disciplinary action.

4. The University agrees to take no further disciplinary action with respect to the conduct described in University's charge dated (**date**).

5. (**Insert statement of any additional actions, if any, that University agrees to take**)

6. Both parties acknowledge that they have read and understand the terms of this agreement and that they enter into this agreement freely and voluntarily, with the approval and advice of their counsel, if any, whose names appear below.

Dated: \_\_\_\_\_

\_\_\_\_\_  
**(Student's name)**

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Student Conduct Administrator's **name**)  
Student Conduct Administrator

**[If student and University were represented by counsel, include the following:]**

Approved as to form and content:

Dated: \_\_\_\_\_

\_\_\_\_\_  
**(Name of counsel for student)**

Dated: \_\_\_\_\_

\_\_\_\_\_  
**(Name of counsel for University)**

## Appendix D

### Sample Notice of Hearing

(Date)

#### Certified Mail and E-mail

(Student's name and address)

Dear (student's name):

This is to notify you that pursuant to Executive Order No. 1043, a student disciplinary proceeding is being initiated against you. You are charged with violation of subsections (\_\_\_), (\_\_\_), and (\_\_\_) of § 41301 of Title 5 of the California Code of Regulations which state:

**(reprint copy of applicable code section(s) here)**

The conduct giving rise to the charges is as follows:

1. **(insert statement of facts which are basis for charges)**

A copy of Executive Order No. 1043 as well as additional information regarding the evidence against you may be obtained from **(individual's name, title, and location)**.

In accordance with provisions of Executive Order No. 1043, a disciplinary hearing has been scheduled. The hearing will take place on **(date)**, at **(time)**, in **(location)**. The hearing is closed to everyone other than the person conducting the hearing, you, the student conduct administrator, a single advisor for you, a single advisor for the student conduct administrator, the person designated to record the hearing, and witnesses while they are testifying.

**(Insert following paragraph only if President has decided to permit the use of attorneys at the hearing :)** Your advisor at the hearing may be an attorney and may advise you at the hearing but you are responsible for putting on your case before the Hearing Officer. If your advisor is an attorney, you must inform me of the name and address of your attorney at least five (5) working days prior to the hearing.

**(Insert following paragraph only if President has decided NOT to permit the use of attorneys at the hearing:)** As set out in [campus policy] your advisor at the hearing may not be an attorney. Although you are responsible for preparing and presenting your defense at the hearing, this does not preclude you from consulting an attorney when preparing in advance of the hearing.

If you and/or your advisor fail to appear at the hearing without satisfactory explanation, the hearing shall proceed and a decision will be rendered on the basis of the evidence presented at the hearing.

You may waive your right to a hearing and accept the recommended sanction without admitting that you engaged in the conduct charged. The recommended sanction is (**insert recommended sanction**).

If you wish to accept this sanction, please sign the statement enclosed with this notice and return it to me at (**location/address**) within five working days of receipt of this letter. Failure to return this statement within that time period will result in the hearing taking place as scheduled.

After the hearing has concluded, the Hearing Officer will prepare a report and make a recommendation to the President. In that report, the Hearing Officer may recommend that the President impose a more severe sanction than the one stated above. In addition, upon receiving the Hearing Officer's report, the President may choose to impose a more severe sanction than that recommended by the Hearing Officer. After receiving the report, the President will issue a decision on this matter. That decision is final. There is no further right of appeal.

You will be regarded as innocent of the charges against you unless and until they are established by a preponderance of the evidence.

All correspondence with the University regarding this disciplinary proceeding should be addressed to me.

Very truly yours,

XX  
Student Conduct Administrator

Enclosure(s)





**Summary of Facts**

7. The evidence presented at the hearing established that

a) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

c) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

d) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

e) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. In reviewing the charges brought against (student name), it is clear by a preponderance of evidence that the student violated the following sections of the Student Conduct Code (cite section of code):

- a)
- b)
- c)

AND/OR

The student did not violate the following sections of the Code as charged:

- a)
- b)
- c)

**Recommendation**

9. After careful consideration of all of the evidence presented, I recommend that (Student's Name) \_\_\_\_\_ should be/should not be sanctioned. The sanction, (if any), should be \_\_\_\_\_

The reason(s) for this recommended sanction is/are \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Hearing Officer's Signature

\_\_\_\_\_  
Date

## Appendix F

### **Form Final Decision Letter from President**

(Date)

#### **Certified Mail and E-mail**

(Student's name and address)

Dear (student's name):

This is to notify you that pursuant to Title 5, § 41301 and Executive Order No. 1043, you are being **[put on probation, suspended, expelled, and *include any details such as term, start date, keep off order, etc.*]**. This decision is based on my review of the report and recommendation made to me by Hearing Officer **[hearing officer's name]** pursuant to the hearing that was conducted on **[date of hearing]**.

**[If the sanction being imposed is more severe than that recommended by the Hearing Officer, set forth the reasons why the more severe sanction is appropriate and confirm that you have personally reviewed the entire record in reaching this decision.]**

Sincerely,

**[President]**