August 14, 1970

TO: State College Presidents

FROM: Glenn S. Dumke, Chancellor

SUBJECT: Student Disciplinary Procedures of the California State Colleges

I am pleased to attach five copies of Executive Order No. 109, relating to the establishment of Student Disciplinary Procedures, along with the following documents:

1. Student Disciplinary Procedures of the California State Colleges (Attachment A);

Please arrange their distribution to the various areas concerned with this matter.

GSD/akc/ph

Copies to: Chancellor's Staff
This Executive Order is issued pursuant to Section 41304 of Title 5 of the California Administrative Code.

1. Except as provided in this Executive Order, the Student Disciplinary Procedures for the California State Colleges is established for the California State Colleges, and shall govern disciplinary procedures with respect to students according to its terms. A copy of these procedures is attached to this Executive Order as Attachment A.

2. These procedures supersede other procedures previously in force in the California State Colleges, as to all future matters and all pending matters in which hearings have not yet been held.

3. Hearing Officers will be designated by the Chancellor for each State College, as provided in Section 9-a of these Procedures. Until further notice, hearing officers appointed by the Presiding Officer of the Office of Administrative Procedure (Government Code Sections 11370-11370.4) are hereby designated as Hearing Officers under these Procedures. Arrangements have been made whereby such Hearing Officers will be assigned upon request of the President to the Presiding Officer, at his office in Sacramento.

4. These procedures should be read with the memorandum of the General Counsel, which is attached to this Executive Order as Attachment B.

DATED: August 14, 1970.

Glenn S. Dumke
Chancellor
STUDENT DISCIPLINARY PROCEDURES FOR THE
CALIFORNIA STATE COLLEGES

1. Purpose and Scope.
   a. It is the purpose of this document to provide procedures which are fair and just, to both the student charged and to the institution, by which it can be determined whether violations of conduct and conduct-related regulations have occurred.
   b. These Procedures are established pursuant to Section 41304, Title 5, California Administrative Code.* They govern determinations under Sections 41301, 41302 and 41303 of that Code, and other state and federal laws which require college hearings.

2. Authority of the President.
   a. The President shall exercise his authority in disciplinary actions pursuant to Sections 41301, 41302 and 41303 of Title 5, California Administrative Code, these Procedures, and other laws and regulations as applicable.
   b. All determinations and findings made at the College level by anyone other than the President, including determinations and findings of the Hearing Officer (see Section 9), are in the nature of recommendations to the President, who shall have final campus authority. Decisions of the President are subject to review by the Chancellor or his designee, and by the Board of Trustees. The designation of Hearing Officers (see Section 9-a) and decisions on challenges of any Hearing Officer for cause (see Section 10-e) shall be made by the Chancellor or his designee.
   c. The functions of the President as described in the following sections of these Procedures, may be delegated by him to individual designees who are members of the staff of the College, and who shall exercise those functions in his name. All references in these Procedures to the President include such designees. The President shall be responsible for any action taken under his authority.

3. Immediate Suspension.
   a. The President may order the immediate suspension of any student for the interim period pending a hearing whenever he determines such action to be required in order to protect lives or property and to insure the maintenance of order. The student so suspended shall be afforded an opportunity for a hearing with respect to the immediate suspension. The hearing on the immediate suspension will normally be afforded within two working days** of the suspension but in any event, not

*Specific code sections referred to in these Procedures are set out in Appendix.
**"Working day" is defined in Section 13-e.

Attachment A
later than ten days of the suspension. The hearing shall be held pursuant to the provisions of Section 6-a of these Procedures. The issues shall be whether his continued suspension pending such disciplinary hearing is required in order to protect lives or property and to insure the maintenance of order, and on any issues presented by a request for hearing pursuant to Penal Code Section 626.4(c).

b. Immediate suspension will be coupled with a withdrawal of consent to remain on campus, pursuant to Penal Code Section 626.4, whenever it is determined, pursuant to that section, that there is reasonable cause to believe that the person has willfully disrupted the orderly operation of the campus or college facility, and that his presence will constitute a substantial and material threat to such orderly operation.

4. When Hearings are to be Held; Waivers.

a. Action under these Procedures shall go forward regardless of possible or pending other administrative, civil or criminal proceedings arising out of the same or other events.

b. The President shall cause campus action to be initiated on the basis of the criminal conviction of a student whenever applicable statutes or regulations require it.

c. Hearings shall be held whenever the President accepts the Coordinator's recommendation to that effect, or does not accept a contrary recommendation from him, and whenever required by statute, action by the Board of Trustees, or the Chancellor. The President shall decide the kind of hearing to be held, as authorized in Section 5.

d. In any case in which a student is entitled to a hearing, the student may instead waive a hearing and accept a sanction with respect to discipline and decision with respect to eligibility for or termination of financial aid, as recommended by the Coordinator and approved by the President. The student may accept the sanction and financial aid decision without admitting that he engaged in the conduct charged. Should the student not accept the sanction and financial aid decision, the matter shall proceed to hearing, and no cognizance shall be taken of the recommendation made pursuant to Section 4-d.

5. Alternative Kinds of Hearings.

a. Based on recommendations of the Coordinator (see Section 8) and such other considerations as may be pertinent, the President shall decide whether a disciplinary matter should be conducted:

(1) By an administrative officer of the College, as provided in Section 6.

(2) By the Hearing Officer, as otherwise provided in these Procedures.
(3) By a residence hall committee, in the case of charges of conduct violations in residence hall facilities where the infraction charged, as determined by the Coordinator, does not involve a possible sanction of suspension or expulsion.

b. In making his determination, the President may consider the expressed wishes of the student charged, the degree of apparent complexity of the facts or issues, and the seriousness of the offense. Ordinarily, the desire of the student charged for a hearing by an administrative officer, the apparent absence of complicated facts or issues, and the relative lack of seriousness of the offense, are factors in favor of a hearing by an administrative officer.

6. Office Hearings by an Administrative Officer; Hearings Under Section 5-a(3).

a. Office hearings by an administrative officer shall be informal, and subject to such procedure as the President may determine; provided that a student whose case is considered in this way shall: receive notice of misconduct charged in terms of a general description of the conduct and the provisions he is charged with having violated; be informed of any evidence to be considered against him and have an opportunity to challenge and rebut it, and to present evidence on his own behalf; be informed of the decision of the President and of the administrative officer's recommendation to the President. Such hearings shall be closed to all persons other than the students and the Coordinator, a single adviser for each of them, and witnesses while they are presenting evidence.

b. Hearings under Section 5-a(3) shall be subject to such procedures as the President shall determine, but shall afford the student charged with at least the provisions enumerated in Section 6-a.


a. The Coordinator shall prepare and mail notices as appropriate to the student charged. Notices addressed to him at the last address posted on the records of the Registrar of the College, and deposited in the United States mail, postage prepaid, shall be presumed to have been received and read by the student charged.

b. The Coordinator shall initiate hearing procedures against a student charged, by mailing or personally delivering a notice letter to him, by registered or certified mail, return receipt requested, which notice:

(1) Contains a statement of the charges against him, in terms of Sections 41301 and 41302 of Title 5, California Administrative Code, Section 22505 of the Education Code if that Section is applicable, and applicable financial aid eligibility termination provisions, if any, and a factual description stated with reasonable particularity, of the conduct upon which the charges are based.
(2) Notifies him of the time and place of hearing.

(3) Refers to or encloses a copy of these Procedures.

(4) Notifies him that he may be accompanied at the hearing by an adviser of his choice, who may act on his behalf, and who may be an attorney, and of the time within which he must inform the Coordinator of the name and address of his advisor if he is an attorney.

(5) Includes such information as an immediate suspension and withdrawal of consent to remain on campus where such action has been decided upon; a request for the student's preference as to the kind of hearing to be conducted (Section 5), and any determination reached pursuant to Section 4-d with respect to possible sanctions and financial aid eligibility termination pursuant to Section 12-c, and such other information as the Coordinator may wish to include.

8. Coordinator.

a. The President shall assign a member of the College staff the general charge of the administration of these Procedures; the duties described in these Procedures; and such other duties as the President may determine. The person so assigned shall serve in this assignment at the pleasure of the President.

b. The person so assigned may use such local, administrative title as the President may determine. For convenience, he is referred to herein as "Coordinator."

c. All references in these Procedures to the Coordinator shall include any other persons who are authorized by the President to assist the Coordinator and act in his name.

d. The Coordinator shall investigate all alleged violations of Sections 41301 and 41302, Title 5, California Administrative Code, Section 22505 of the Education Code and related matters concerning withdrawal of consent to remain on campus and of eligibility for and termination of financial aid.

e. As a result of his investigation, the Coordinator shall make a recommendation to the President as to whether the matter should proceed, and of the kind of hearing, authorized in Section 5, which should be held.

f. The Coordinator shall send such notices as are appropriate, and institute hearings pursuant to these Procedures.

g. The Coordinator shall make physical and scheduling arrangements for the hearing of cases.

h. Except where other provision is made by the College with respect to hearings by an administrative officer (Section 5-a(1)) and to residence hall matters (Section 5-a(3)), the Coordinator shall
attend the hearings and shall marshal and present the evidence against the student charged.

9. Hearing Officer.

a. The Chancellor shall designate one or more Hearing Officers, who shall serve for terms as determined by the Chancellor.

b. Hearing Officers shall be attorneys, admitted to practice law in California who are qualified by professional experience in presiding at judicial or quasi-judicial adversary proceedings, or who have been members of the California State Bar for at least five years. They will not hold any employment, or other contract (other than as a hearing officer) with any State College during the period of their service.


a. Evidence.

Evidence shall be admitted if it is relevant and is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. Formal rules of evidence shall not apply, but the rules of privilege shall be effective to the extent that there are statutory bases for their application. Irrelevant and unduly repetitious evidence shall be excluded. No evidence other than that received at the hearing shall be considered by the Hearing Officer.

b. Both the student charged or his adviser and the Coordinator or his adviser shall be entitled to present relevant evidence and to question witnesses presented by the other. The President shall request students and employees of the State College to present evidence at a hearing when requested on behalf of the student or the Coordinator.

c. The student will not be required to give self-incriminating evidence, and no inference of his guilt shall be drawn by reason of his not giving evidence on this ground.

d. The Hearing Officer shall:

(1) Make all rulings on matters relating to the conduct of the hearing, including matters regarding admission of evidence.

(2) Maintain an orderly hearing and permit no person to be subjected to abusive treatment. He may eject or exclude anyone who refuses to be orderly.
(3) Recognize the student charged or his adviser, and the Coordinator or his adviser, for the purpose of questioning witnesses or presenting argument, evidence or requests to the Hearing Officer. The Hearing Officer may also question witnesses.

(4) Make such rulings regarding the conduct of the hearing as he deems appropriate, not inconsistent with these Procedures.

e. A student charged may challenge the Hearing Officer for cause by submitting a written statement setting forth facts which establish that:

(1) The Hearing Officer was a participant in the event out of which the action arose except events connected with the conduct of a hearing; or

(2) The Hearing Officer is related to or has had past association with the student charged or his adviser, the Coordinator or his adviser, or another person who has been adversely affected by the events giving rise to the action, which past association is of a kind which would prejudice his judgment to the degree that it appears that a fair hearing could not be had. "Past association" does not include an association acquired in connection with a previous hearing.

The Chancellor or his designee shall determine whether the facts present grounds for disqualification and his decision shall be final. The Hearing Officer may disqualify himself on his own motion. No peremptory challenges may be made.

f. Following presentation of evidence, the Hearing Officer shall privately consider the evidence with all other persons excluded and shall prepare a written report, to the President. The report, which shall ordinarily be submitted to the President within two business days of the termination of the Hearing, shall contain as to each student charged:

(1) A summary of the facts as found by the Hearing Officer, and a determination that the student did or did not commit the acts charged.

(2) A finding that the act did or did not constitute one of the causes for discipline listed in Sections 41301 or 41302 of Title 5 of the California Administrative Code.

(3) Findings as appropriate with respect to eligibility for and termination of financial aid.

(4) A recommendation of discipline, if any.

(5) Such further report as the Hearing Officer may consider appropriate.
g. The student charged shall be regarded as innocent of the charges against him until the contrary is established by a preponderance of the evidence. The Hearing Officer shall find a student to have committed the acts as to which he is charged when the Hearing Officer is persuaded by a preponderance of the evidence that the student committed said acts.

h. The Hearing Officer shall make his report only to the President of the College.

i. Advisers: Attorneys.

(1) The student charged may be accompanied by one adviser of his choice, who may act on his behalf. If he desires that his adviser be an attorney, the student charged must give written notice of the name and office address of the attorney to the Coordinator at least three working days before the time set for commencement of the hearing; if there are less than four working days between that time and the date of the notice of hearing, then the notice that his adviser will be an attorney must be given at the earliest reasonable time. Otherwise his attorney will not be admitted to the hearing.

(2) Should a student charged advise that he will be accompanied by an attorney, the Coordinator shall immediately advise the Office of General Counsel, so that an attorney may be present with the Coordinator to present the case.

j. Times Within Which Hearings are to Proceed.

(1) Matters preliminary to hearings shall be decided, hearings conducted, and cases determined under these Procedures as quickly as possible, consistent with reasonable notice.

(2) Normally, matters preliminary to hearings shall be decided and notices of hearings given, within three working days of the time the Coordinator is informed that a probable conduct violation or other basis for a hearing has occurred, and of the identity of the person or persons apparently responsible.

(3) Hearings will normally be held within seven working days of the date notice is sent to the student charged.

(4) Other than as required for the convenience of the Hearing Officer, extensions of time for hearings shall be authorized only for good and compelling reasons. The possibility or pendency of other administrative, civil or criminal proceedings against the student charged is not such a reason unless the trial or hearing in that matter is scheduled for the same day as the College hearing, or unless it is physically impossible for the student charged to attend the College hearing.
k. Hearings shall be closed to everyone other than the person conducting the hearing, the student charged and the Coordinator, a single adviser for each of them, the person designated to record the hearing pursuant to Section 10-m, and witnesses while they are presenting evidence.

l. It is the policy of the California State Colleges that evidence, proceedings, findings and recommendations (but not the final decision of the President) are confidential and shall not be made public by the College or by any participant in a hearing, including the student charged. In the event these matters should become public, however, the College may authorize such public statements as are appropriate and which do not violate any legal prohibition against such statements.

m. A tape recording but not a transcription, will be kept of the hearing. The student charged, on request, and at his own expense, subsequently may have or, under supervision, make a copy of such recording provided that use of such a copy will be limited to subsequent administrative and judicial proceedings held in connection with the matter. No tape recording by the student charged or by other persons at the hearing will be permitted, but the student charged, at his own expense, may furnish a certified court reporter provided that a copy of the transcript made is promptly furnished to the President at no cost to the College, and that use of such transcript will be limited to subsequent administrative and judicial proceedings held in connection with the matter.

n. Consolidated Hearings.

(1) Where more than one student is charged with conduct arising out of a single occurrence, or out of connected multiple occurrences, a single hearing may be held for all of the students so charged. Such students may request that their case be consolidated with others, or separated from others. The Coordinator 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.

(2) 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.

o. Absence of the Student Charged.

If the student charged does not appear, (personally or through his adviser) without satisfactory explanation for his absence having been made at his earliest opportunity, or should he leave the hearing before its conclusion, or adjournment, the hearing shall proceed without him, and the Hearing Officer shall render a decision based on the available evidence and make his report just as though the student charged has been present throughout the hearing. The fact that an administrative hearing or a

a. The President may establish a procedure whereby a committee of students, or students together with faculty or with faculty and administrative personnel, will review the recommendations of the Hearing Officer with respect to the discipline to be imposed, if any, and advise the President. Such committees, if established, shall be composed in such manner as the College may determine. It shall not receive new evidence or argument, or conduct hearings, and its members shall be bound by the policy of confidentiality as stated in Section 10-1. If such a committee is established, the President shall forward a copy of the report of the Hearing Officer to the committee as soon as it is received, and the committee shall present its recommendations, if any, to the President within two working days of its receipt of the report.

b. The President shall review the report of the Hearing Officer, and recommendations if any, of any committee established pursuant to Section 11-a. He may take the action recommended by the Hearing Officer; he may adopt a lesser sanction; he may, if necessary, refer the matter back to the Hearing Officer for further findings on specified issues; or, after a review of the record, he may adopt a more severe sanction. In cases where a committee has not been established pursuant to Section 11-a, the President normally shall render his decision within three working days of receipt of the recommendations of the Hearing Officer. In cases where such a committee has been established, the President normally shall render his decision within three working days of receipt of the recommendations of the Committee, and no later than six working days after initial receipt of the report of the Hearing Officer.

c. The President shall cause notification of his action to be sent to the student charged. If the action taken is suspension or expulsion with denial of access to the campus and College facilities, notification shall be by certified or registered mail. The report of the Hearing Officer, and the recommendations of any committee established pursuant to Section 11-b, shall be made available to the student.

d. If the action taken is suspension or expulsion, and the student charged is a minor, his parent or guardian shall be notified of the action by certified or registered mail, return receipt requested, sent to the parent or guardian's last address posted on the records of the Registrar.
12. Discipline Which May be Imposed; Eligibility for and Termination of Financial Aid.

a. Students may be expelled, suspended, placed on probation, or given a lesser sanction, as provided in Section 41301 of Title 5, California Administrative Code.

b. Students who are expelled or suspended on the basis of conduct which disrupted the orderly operation of the campus or any facility of a State College, may be denied access to all or any part of the campus or other facility:

(1) In the case of expulsion, for up to one year.

(2) In the case of suspension, for a period up to the period of the suspension.

c. Determination on Eligibility for and Termination of Financial Aid.

Concurrently with actions under these Procedures, the person conducting the hearing shall also determine whether the particular conduct found to have occurred is a basis for ineligibility for or termination of financial aid under applicable provisions of State or Federal law, and of the Board of Trustees.

Financial aid shall be terminated or eligibility denied by the President whenever required by any of these provisions.

(1) Hearings by a hearing board on questions of financial aid termination shall be held where required by Education Code Section 31292.


a. A student enrolled at a State College who is accused of conduct subject to disciplinary action at another State College, shall be subject to disciplinary action at the campus with respect to which the violation is alleged to have occurred, and all references to the President, the Coordinator, and the Hearing Officer shall refer to those persons at that campus; provided that the President of the College at which the student is enrolled shall make the final decision with respect to discipline.

b. Hearings on qualifications for admission or denial or admission pursuant to Section 41303 of Title 5, California Administrative Code, shall be conducted pursuant to Sections 6 or 10 of these Procedures, as the President shall determine.

c. The President may combine the duties of Coordinator with those of any other officer or employee, but may not combine such duties with those of the administrative officer assigned to conduct an office hearing pursuant to Section 6 of these Procedures, or with those of the Hearing Officer.

d. Arguments by the student charged or his adviser concerning the legal (as distinguished from factual) applicability, or legal
validity of any provision on the basis of which the student is charged, or of these Procedures, shall not be addressed to the person hearing the case, but to the President, as soon as the hearing has concluded. The President will seek advice on the matter from the Office of General Counsel. The advice will be reported to the President and will be considered by him before a final decision is rendered.

e. As used in these Procedures, "working day" shall mean any day other than a Saturday, Sunday or holiday as defined in Government Code Section 18025. Technical departures from these Procedures and errors in their application shall not be grounds to withhold disciplinary action or a determination of ineligibility for or termination of financial aid unless, in the opinion of the President, the technical departures or errors were such as to have prevented a fair and just determination of the issues.
APPENDIX

Title 5, California Administrative Code Sections:

41301. Expulsion, Suspension and Probation of Students. Following procedures consonant with due process established for the state college of which he is a student, any student of a state college may be expelled, suspended, placed on probation or given a lesser sanction for one or more of the following causes which must be state college related:

(a) Cheating or plagiarism in connection with an academic program at a state college.

(b) Forgery, alteration or misuse of state college documents, records, or identification or knowingly furnishing false information to a state college.

(c) Misrepresentation of oneself or of an organization to be an agent of a state college.

(d) Obstruction or disruption, on or off college property, of the state college educational process, administrative process, or other college function.

(e) Physical abuse on or off college property of the person or property of any member of the college community or of members of his family or the threat of such physical abuse.

(f) Theft of, or non-accidental damage to, state college property, or property in the possession of, or owned by, a member of the college community.

(g) Unauthorized entry into, unauthorized use of, or misuse of state college property.

(h) On state college property, the sale or knowing possession of dangerous drugs, restricted dangerous drugs, or narcotics as those terms are used in California statutes, except when lawfully prescribed pursuant to medical or dental care, or when lawfully permitted for the purpose of research, instruction or analysis.

(i) Knowing possession or use of explosives, dangerous chemicals or deadly weapons on state college property or at a state college function without prior authorization of the state college President.

(j) Engaging in lewd, indecent, or obscene behavior on state college property or at a state college function.

(k) Abusive behavior directed toward a member of the college community.
(l) Violation of any order of a state college President, notice of which had been given prior to such violation and during the academic term in which the violation occurs, either by publication in the campus newspaper, or by posting on an official bulletin board designated for this purpose, and which order is not inconsistent with any of the other provisions of this Section.

(m) Soliciting or assisting another to do any act which would subject a student to expulsion, suspension or probation pursuant to this Section.

(n) For purposes of this Article, the following terms are defined:

(1) The term "member of the college community" is defined as meaning state college Trustees, academic, non-academic and administrative personnel, students, and other persons while such other persons are on state college property or at a state college function.

(2) The term "state college property" includes:

(A) real or personal property in the possession of, or under the control of, the Board of Trustees of the California State Colleges, and

(B) all state college feeding, retail, or residence facilities whether operated by a college or by a state college auxiliary organization.

(3) The term "deadly weapons" includes any instrument or weapon of the kind commonly known as a blackjack, slung shot, billy, sandclub, sandbag, metal knuckles, any dirk, dagger, switchblade knife, pistol, revolver, or any other firearm, any knife having a blade longer than five inches, any razor with an unguarded blade, and any metal pipe or bar used or intended to be used as a club.

(4) The term "behavior" includes conduct and expression.

(o) This Section is not adopted pursuant to Education Code Section 23604.1.

(p) The provisions of this Section as hereinabove set forth shall only apply to acts and omissions occurring subsequent to its effective date. Notwithstanding any amendment or repeal pursuant to the resolution by which any provision of this Article is amended, all acts and omissions occurring prior to that effective date shall be subject to the provisions of this Article as in effect immediately prior to such effective date.
Notification. The President of the state college may place on probation, suspend, or expel a student for one or more of the causes enumerated in Section 41301. No fees or tuition paid by or for such student for the semester, quarter, or summer session in which he is suspended or expelled shall be refunded. If the student is readmitted before the close of the semester, quarter, or summer session in which he is suspended, no additional tuition or fees shall be required of the student on account of his suspension. In the event that a student who has not reached his twenty-first birthday is suspended or expelled, the President shall immediately notify his parent or guardian of the action by registered mail to the last known address, return receipt requested.

During periods of campus emergency, as determined by the President of the individual campus, the President may, after consultation with the Chancellor, place into immediate effect any emergency regulations, procedures, and other measures deemed necessary or appropriate to meet the emergency, safeguard persons and property, and maintain educational activities.

The President may immediately impose an interim suspension in all cases in which there is reasonable cause to believe that during a campus disturbance a student has interfered with the peaceful conduct of the campus by an act which is a cause for disciplinary action pursuant to Section 41301 and that, unless placed on interim suspension, such student would commit further acts of the same or a similar character. A student so placed on interim suspension shall be given prompt notice of charges and the opportunity for a hearing within not to exceed one week of the imposition of interim suspension. During the period of interim suspension, the student shall not, without prior written permission of the President or his designated representative, enter any campus of the California State Colleges other than to attend the hearing. Violation of any condition of interim suspension shall be grounds for expulsion.

41303. Conduct by Applicants for Admission. Notwithstanding any provision in this Chapter 1 to the contrary, admission or readmission may be qualified or denied to any person who, while not enrolled as a student, commits acts which, were he enrolled as a student, would be the basis for disciplinary proceedings pursuant to Section 41301 or 41302. Qualifed admission or denial of admission in such cases shall be determined under procedures adopted pursuant to Section 41304.

41304. Student Disciplinary Procedures for the California State Colleges. The Chancellor shall prescribe, and may from time to time revise, a code of student disciplinary procedures for the California State Colleges. Subject to other applicable law, this code shall provide for determinations of fact and sanctions to be applied for conduct which is a ground of discipline under Section 41301 or 41302, and for qualified admission or denial of
admission under Section 41303; the authority of the state college President in such matters; conduct related determinations on financial aid eligibility and termination; alternative kinds of proceedings, including proceedings conducted by a Hearing Officer; time limitations; notices; conduct of hearings, including provisions governing evidence, a record, and review; and such other related matters as may be appropriate. The Chancellor shall report to the Board his actions taken under this Section.

Education Code Section:

22505. Disciplinary Actions; Hearing; Immediate Suspension. The chief administrative officer of a junior college, state college, or state university, after a prompt hearing of the facts, shall take appropriate disciplinary action against any student, member of the faculty, member of the support staff, or member of the administration of the junior college, state college, or state university who has been convicted of a crime arising out of a campus disturbance or, after a hearing by a campus body, has been found to have willfully disrupted the orderly operation of the campus. Nothing in this Section shall be construed to prohibit, where an immediate suspension is required in order to protect lives or property and to insure the maintenance of order, interim suspension pending a hearing; provided that a reasonable opportunity be afforded the suspended person for a hearing within 10 days. The disciplinary action may include, but need not be limited to, suspension, dismissal, or expulsion. The provisions of Sections 24308 to 24310, inclusive, shall be applicable to any state college employee dismissed pursuant to this Section. The chief administrative officer of each such institution shall submit periodic reports as to the nature and disposition of cases acted upon pursuant to this Section to his governing board.

Education Code, Division 22, Chapter 4, Consisting of Sections:

31291. Financial Aid Agreement; Ineligibility for State Financial Aid; Hearing Board. In accepting a scholarship, loan, fellowship, grant-in-aid, or any other financial aid given or guaranteed by the state for assistance, every recipient thereof who is a student at a public or private university, college, or other institution of higher education, shall be deemed to have agreed to observe the rules and regulations promulgated by the governing authority of the university, college, or other institution of higher education, for the government thereof.

Any recipient of such state financial aid who, on the campus
of the university, college, or other institution of higher education, willfully and knowingly commits any act likely to disrupt the peaceful conduct of the activities of such campus, and is arrested and convicted of a public offense arising from such act, may be determined to be ineligible for any such state financial aid for a period not to exceed the ensuing two academic years.

Any recipient of such state financial aid who, after a hearing, is found to have willfully and knowingly disrupted the orderly operation of the campus, but has not been arrested and convicted, may be determined to be ineligible for any state financial aid for such period as the hearing board may determine, not to exceed the ensuing two academic years.

Any such recipient who is suspended from an institution of higher education for such acts shall be ineligible for such state financial aid for a period not less than the time of such suspension.

The governing authority of the university, college, or other institution of higher education shall for purposes of this Section, cause to be reviewed the record of each recipient and shall, as soon as practicable, notify a hearing board established by it of the name of any recipient who committed any such act and was arrested and convicted of any such public offense, or is found to have willfully and knowingly disrupted the orderly operation of the campus, or has been suspended from an institution of higher education for such acts.

31292. Notice of Report to Hearing Board; Hearing; Determination of Suspension of Financial Aid; Notification of Determination.

Upon receipt of notice, as provided in Section 31291, that any recipient has committed any act likely to disrupt the peaceful conduct of the activities of the campus and was convicted of a public offense in connection therewith, or is found to have willfully and knowingly disrupted the orderly operation of the campus, or has been suspended from an institution of higher education for such acts, the hearing board shall immediately give the recipient written notice of the report. The notice shall inform the recipient of the pendency of the proceedings for the suspension of assistance. It shall inform the recipient that he may present evidence of mitigating circumstances to the hearing board within 14 calendar days of the date of the mailing of the notice, and shall specify the procedures and means by which such evidence is to be presented, including the date at which any hearing to be afforded him is to be held. The hearing board may prescribe any procedures and means for such purposes which it may deem appropriate, provided that any hearing which may be afforded the recipient shall not be held sooner than seven days after the date of the mailing of the notice.

If no response to the hearing board's notice is made within
the period specified in this Section, the hearing board may suspend further assistance to the recipient and the suspension shall remain in effect not to exceed the ensuing two academic years.

After the conclusion of proceedings provided for in this Section, the hearing board shall, by majority vote, determine whether further assistance to the recipient shall be suspended. If the recipient was arrested and convicted of a public offense arising from campus disruption, the suspension may remain in effect for a period not to exceed the ensuing two academic years. If the recipient is found by the hearing board to have willfully and knowingly disrupted the orderly operation of the campus, but has not been arrested and convicted, the hearing board may suspend further assistance to the recipient for such period as the hearing board may determine not to exceed the ensuing two academic years. If the recipient was suspended from an institution of higher education for such acts, the hearing board shall suspend further assistance to the recipient for a period not less than the time of such suspension. The findings of the hearing board shall be in writing.

The hearing board shall notify the appropriate state agencies of any suspension of state financial aid pursuant to this Section, and no state financial aid shall be extended to the recipient during such period.

Any notice required to be made by this Section shall be sufficient when it is deposited in the United States registered or certified mail, postage paid, addressed to the last known address of the addressee.

31293. Scope of Chapter. Nothing in this chapter shall be construed to prohibit any public or private university, college, or other institution of higher education from suspending or refusing to grant scholarships, loans, fellowships, grants-in-aid, or any other financial aid given or guaranteed by the state for academic assistance to any individual because of any other misconduct which in its judgment bears adversely on his fitness for such assistance.

31294. State Financial Aid Defined. For the purposes of this chapter, "state financial aid" means any assistance given or guaranteed by the state which is predicated on attendance at an institution of higher education.

Penal Code Sections:

626. Definitions.

(a) As used in this chapter:

(1) "State university" means the University of
California, and includes any affiliated institution thereof and any campus or facility owned, operated, or controlled by the Regents of the University of California.

(2) "State college" means any California state college, and includes any campus or facility owned, operated, or controlled by the Trustees of the California State Colleges.

(3) "Junior college" means any school established pursuant to Chapter 3 (commencing with Section 25500) of division 18.5 of the Education Code.

(4) "Chief administrative officer" means the President of a state college, Chancellor of the California State Colleges, or the officer designated by the Regents of the University of California or pursuant to authority granted by the Regents of the University of California to administer and be the officer in charge of a campus or other facility owned, operated, or controlled by the Regents of the University of California, or the superintendent of a junior college district or a school district maintaining a junior college.

(b) For the purpose of determining the penalty to be imposed pursuant to this chapter, the court may consider a written report from the Bureau of Criminal Identification and Investigation containing information from its records showing prior convictions; and the communication is prima facie evidence of such convictions, if the defendant admits them, regardless of whether or not the complaint commencing the proceedings has alleged prior convictions.

626.2 Entry Upon Campus or Facility of State College or University After Written Notice of Suspension or Dismissal Without Permission; Punishment. Every student or employee who, after a hearing, has been suspended or dismissed from a junior college, state college, or state university for disrupting the orderly operation of the campus or facility of such institution, and as a condition of such suspension or dismissal has been denied access to the campus or facility, or both, of the institution for the period of the suspension or in the case of dismissal for a period not to exceed one year; who has been served by registered or certified mail, at the last address given by such person, with a written notice of such suspension or dismissal and condition; and who willfully and knowingly enters upon the campus or facility of the institution to which he has been denied access, without the express written permission of the chief administrative officer of the campus or facility, is guilty of a misdemeanor and 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 he shall not be released on probation, parole, or any other basis until he 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 he shall not be released on probation, parole, or any other basis until he has served not less than 90 days.

Knowledge shall be presumed if notice has been given as prescribed in this Section. The presumption established by this Section is a presumption affecting the burden of proof.

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 junior college, state college, or state university, or an officer or employee designated by him 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. Such 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 his
absence, a person designated by him 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 may enter written confirmation upon the report of the action taken by the officer or employee. If the chief administrative officer or, in his absence, the person designated by him, does not confirm the action of the officer or employee within 24 hours after the time that 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 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. Such 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 such 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 junior college, state college, or state university, 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 junior college, state college, or state university to suspend, dismiss, or expel any student or employee at such university or college.

(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 he shall not be released on probation, parole, or any other basis until he 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 he shall not be released on probation, parole, or any other basis until he has served not less than 90 days.

Government Code Section:

18025. Holidays. All employees shall be entitled to the following holidays: the first day of January, the 12th day of February, the third Monday in February, the last Monday in May, the fourth day of July, the first Monday in September, the ninth day of September, the second Monday in October, the fourth Monday in October, the 25th day of December, every day on which an election is held throughout the state, and every day appointed by the Governor of this state for a public fast, thanksgiving, or holiday.

When a day herein listed falls on a Sunday, the following Monday shall be deemed to be the holiday in lieu of the day observed. Any employee who may be required to work on any of the holidays herein mentioned, and who does work on any of said holidays, shall be entitled to be paid compensation or given compensating time off for such work within the meaning of this Article. For the purpose of computing the number of hours worked, time during which an employee is excused from work because of holidays, sick leave, vacation, or compensating time off, shall be considered as time worked by the employee.
At its July 13-14, 1970 meeting, the Board of Trustees adopted changes in Title 5, California Administrative Code, authorizing establishment of a State College code of student disciplinary procedure. A draft code was available at the time and distributed as part of the agenda item considered by the Committee on Educational Policy. The week of the Board meeting, this draft, together with the Board's action, was distributed to all State College Presidents, to the Academic Senate of the California State Colleges, and to the California State Colleges Student Presidents' Association (CSCSPA). All were requested to present their comments and suggestions on the procedures, including possible changes, to the Chancellor.

Responses have been received from nearly all State Colleges. From these comments, the suggestions of staff members and two extensive meetings with the CSCSPA Steering Committee, a very large number of valuable suggestions have been received. All of them have been thoroughly reviewed and a sizeable majority are reflected in changes in the procedures established by Executive Order 109.

This memorandum discusses the nature and function of the procedures and comments on certain of its provisions. Some of the questions asked in several of the college responses are addressed in the discussion.

A. THE NATURE AND FUNCTION OF THE PROCEDURES

These procedures complete a major phase of revision in the area of student discipline. In the Spring of 1969, the Board of Trustees completely rewrote its rules and regulations governing student conduct (5 Cal. Adm. Code §§ 41301 and 41302). These provisions constitute the grounds for disciplinary action. The next major phase is the current revision of the procedures through which determinations can be reached in particular cases. However, the issuance of the procedures does not complete revision in the area of student discipline. There is further work to be done and it is important to recognize what the procedures do not do, as well as what they do.

The procedures attempt no articulation of the underlying purposes of student discipline or the questions of its relationship to counseling or the place of discipline as a part of the educational process. Neither do they attempt to
set out a "code of student rights and responsibilities." That is a subject of independent review by the CSCSPA, and is not within the competence of a procedural document.

The procedures should not be construed to modify the operation of student codes in areas other than student disciplinary proceedings. Thus, student judicial systems which have been established or which might be established in the future with jurisdiction over such matters as election disputes on the campus, the interpretation of student body documents, and the like, are not affected by the Executive Order.

In discussions with the CSCSPA Steering Committee, it became evident that in some instances the proposed code had been examined in relation to courtroom procedures with the result that a number of suggestions were made with a view toward replicating court rules and practices in student disciplinary actions.

The courtroom analogy is not appropriate. Instead, the proper comparison is to administrative adjudication by public agencies. That is a field which, by now, is well established and widespread. The procedures in use for administrative adjudication, at federal, state and local levels, typically do not involve panels, juries (and the highly refined special rules which have to be developed in order to have juries), unusual standards of proof, or a number of other special rules that attend certain kinds of court actions, such as criminal trials. But this is not to say that they contemplate open-ended, "anything goes" kinds of proceedings. At least in California, at the state and local levels, they have developed through rules which articulate the kinds of evidence which can be received, procedures through which hearings can be conducted, decisions which can be reached, notice, provision for representation at hearings, and other elements of a fair hearing. Finally, the procedures are intended as a living document. It is anticipated that they will be changed from time to time, on the basis of experience and developments in the law. It is a corollary of this fact that no one is under the illusion that a perfect document has been created. But, judging from the responses and discussions which have been had, it is sincerely believed by most of those who have reviewed it, that it establishes a far better procedure than had existed before, and that it will be possible to make it better yet on the basis of experience and such refinements and modifications as experience indicates.
B. COMMENTS ON PARTICULAR PROVISIONS. (Section references correspond to the procedures.)

3. (Immediate suspension and withdrawal of consent to remain on campus.) The standards for implementation of immediate suspension and for withdrawal of consent to remain on campus, as set out in this section, are taken directly from the applicable statutes: Education Code Section 22505 in the case of immediate suspension, and Penal Code Section 626.4 in the case of withdrawal of consent. We have not felt that we could vary the standard prescribed by the Legislature, and therefore have used it without change.

It is anticipated that an immediate suspension would almost always be coupled with withdrawal of consent to remain on campus. The reason is that the factors which would justify suspending a student before a hearing can be held on the merits would almost necessarily require his removal from the campus during the same interim period of time.

It is unfortunate that the statutory framework separates these two actions—immediate suspension and withdrawal of consent to remain on campus. The statutory differences between them have necessarily complicated this provision dealing with their implementation.

For both immediate suspension and withdrawal of consent, the law requires that a hearing be held within specified periods of time: 10 days for the former and 14 days for the latter. The issue at the hearing is not the ultimate question of the student's guilt or innocence under charges or the formal discipline, if any, to be imposed. Instead, it is whether at the time of the hearing, conditions justify a continuation of the temporary suspension and withdrawal of consent.

In some circumstances, it may be possible to combine this hearing with the hearing on the merits, provided the student charged is given adequate notice.

4-b. (Action following criminal convictions.) Education Code Section 22505 requires proceedings for discipline to be initiated in the case of a student who has been convicted of a crime as described in that Section. As pointed out in the General Counsel's Digest of Selected Legislation as Enacted in the 1969 Regular Session (pp. 51-54), the hearing must be held in the event of such a conviction, even if there had been an earlier campus proceeding on the student misconduct issues. In the event of a conviction, the code requires "appropriate disciplinary action" to be taken. The issues at the hearing are whether the student charged was convicted of a crime, and whether the crime arose out of a campus disturbance.
Education Code Sections 31291 and 31292 are similar with respect to financial aid termination where state financial aid of some kind is involved. These sections, together with federal aid termination statutes are discussed in our opinions L68-328 (Student Disturbance Limitations on Eligibility for Federal Assistance Programs) and L69-780 (Forfeiture of State Aid to Students) previously distributed to State College presidents, deans of students and State College financial aid officers. The state and federal statutes also require proceedings to be initiated under circumstances other than conviction of certain crimes. (See discussion with respect to Section 12-C(1)).

4-d. (Waiver of hearing and acceptance of determination of the Coordinator). It is anticipated that, as a matter of general practice, the Coordinator will make preliminary determinations of the appropriate disciplinary sanction and of the financial aid issues merited by the case. Once the president or his designee has approved these preliminary determinations, the Coordinator will then give the student concerned an opportunity to discuss the matter with him. Where this practice has been used in the past in the State Colleges, the Coordinator has typically informed the student in some detail of the evidence in hand against him. The student may then accept the decision arrived at, or not. The section makes it quite clear that in the event the student does not accept it, the preliminary decision has no further standing whatever, and may not be received in guidance or considered at a subsequent hearing.

5-a-1 and 6-a. (Office hearings.) These sections allow informal hearing by an administrative officer. They were prepared to retain maximum flexibility at the college. As a result, they provide that the president is to determine the procedures to be followed with respect to such hearings, except for the provisions spelled out in the document itself. These include the following: The hearings must be held before a single administrative officer rather than a panel; the student charged is entitled to adequate notice; evidence considered by the administrative officer must be shared with the student charged so that he is informed of all such evidence against him and can question it; the student charged must have an opportunity to present evidence on his own behalf; and the student charged must be notified that he may be accompanied by an adviser. It is for the college to further develop rules to implement this section in a manner which retains both the elements of fundamental fairness and the informality the provision is designed to provide. It is recommended that the standard of evidence set out in Section 10-a be used; and that the substance of Sections 10-f, c, g, i, j, l, m, n, and o, also be retained. The college procedures should provide that the Coordinator be present at these proceedings, as is
contemplated in the final sentence of Section 6-a. Finally, the college may appropriately provide for findings by the administrative officer to cover the elements set out in Section 10-f, and for presidential action and review along the lines of Section 11.

5-a-3 and 6-b. (Residence hall committees.) This provision is designed to enable colleges which wish to do so, to continue the practice of residence halls committees for minor infractions in residence hall facilities. Such proceedings are now relatively informal in nature and, under these procedures, they would involve relatively minor alleged infractions. The provision is permissive so that the college may elect to have such committees or not, as it chooses. It was considered that similar committees for other areas are beyond the scope of this document; thus, action by a fraternity with respect to its members would not be a matter of student discipline and, as already indicated, the functions of student judiciaries in non-disciplinary matters are also outside of the scope of the document.

7. (Notices) The Office of General Counsel will prepare forms for notices, which may be considered for use by the State Colleges. Should an immediate problem arise prior to the time these forms are received, it is suggested that the Coordinator or other appropriate college officer discuss it with the attorney assigned to the State College.

8-a. (Coordinator) The provision with respect to appointment of the Coordinator is drawn to provide maximum possible flexibility to the College. It is not anticipated that the functions of this position will be full-time. More likely, they will be sporadic, occasionally being not only full time, but requiring assistants, while on other occasions requiring a very small amount of time. This circumstance would seem to suggest a combination of the duties of the Coordinator with such other duties as the College may consider appropriate.

In their comments with respect to the proposed procedures, several State Colleges asked whether the Coordinator position should be included within the student personnel division on the college. The function could be included in the student personnel area. Indeed, the dean of students or an associate dean could be appointed Coordinator. Whether or not this is advisable is entirely within the sound discretion of the College.

9. (Hearing Officer) At the very strong request of the CSCSPA Steering Committee, and in accordance with suggestions forwarded by many of the Colleges, the procedures now provide that the Chancellor, will designate the hearing officer, rather than the Presidents.
Work has already begun which it is hoped will lead to the designation of professionally qualified individuals in each community who can be available as hearing officers. At the present time, it is not anticipated that a permanent or full-time hearing officer or panel of hearing officers will be retained through the Chancellor's Office and sent to the colleges on a "circuit riding" basis. Instead, it is proposed that working through each college, it will be possible to designate qualified individuals in the area of the college. In many instances, it is hoped that our efforts in this area can be assisted through the organized bar. In the case of a few state colleges, we now know that it will be possible to designate a retired judge of considerable stature as hearing officer.

In the meantime, the Chancellor has designated hearing officers appointed by the Presiding Officer of the Office of Administrative Procedure. This is an agency of the State government made up of full-time professional hearing officers, assigned to conduct adversary quasi-judicial administrative hearings in a wide variety of matters.

10-k, l, and m. (The record, and confidentiality.) These provisions provide for a record of the proceedings, and for a policy of confidentiality.

We are informed that in the view of student personnel professionals, it is in the interest of the college and of the educational validity of student disciplinary procedures that proceedings in these matters be held confidential. These procedures reflect that point of view.

It has been suggested that hearings should be closed and the proceedings considered as confidential only if the student charged so requests. Of course, this would be inconsistent with the policy just summarized. Besides complicating consolidated hearings, it would also seriously weaken the ability of the college to protect, as confidential, the record of a proceeding which the student charged had asked be closed. This subject has been litigated at the trial level on a number of occasions. Courts have held that a policy of confidentiality on the part of the college would present a substantial basis for the exercise of judicial discretion recognizing a privilege with respect to the proceedings. On the other hand, a college policy that the proceedings are confidential only at the request of the student concerned, has been held to make the college a mere conduit for the request of the student. Since the student has no legal right to confidentiality assertable in court, the court held that the college is in no better position when its action is based only on the student's request.

A breach of this confidence, such as would occur by an unauthorized disclosure of the tape recording of a hearing,
could be made subject to sanction, on the basis of an appropriate local order published as provided in subdivision (1) of Section 41301 of Title 5.

The provisions on confidentiality make clear that a student charged may make the campus proceedings public in a court action brought to review the disciplinary action of the college. Thus, should a student suspended under these procedures apply to a court for judicial review of the disciplinary action, the record of the proceedings could become a public document.

The final decision of the President on discipline may be made public.

11-a (Reviewing Panel.) A few suggestions were received from state colleges, and the CSCSPA Steering Committee recommended, that the panel system be continued on an optional basis so that a student charged could choose to have his case heard by a student panel constituted as before. An alternative suggestion in one case was that the hearing officer be supplemented by a student jury which would decide all of the factual questions. (The CSCSPA Steering Committee also recommended a review panel; that suggestion is discussed following a review of the trial panel and jury proposals.) It is our view that the implementation of either of these proposals (trial panel, and jury) would result in procedures just as unsatisfactory as those we have had.

As was discussed more fully at the Committee on Educational Policy on July 13, 1970, the accumulated experience of hundreds of separate hearings establishes that the panel system does not work and there is no prospect that it can be made to work. Among other problems, it calls upon laymen to manage and control a hearing and decide the many kinds of questions hearing officers are constantly called upon to determine during the course of the proceedings. It asks laymen to perform that which, in administrative adjudication, has almost universally become the job of a trained professional: fact determination and settling the record. Because of the number of people involved in a panel, and the fact that all of them have different ongoing campus schedules which they cannot be expected to drop, difficult problems of scheduling are created, which in turn have led to one delay after another.

The jury proposal may have resulted from the assumption that since the procedures proposed are more formal and "legal" than many of the loose arrangements that had existed, it would be better still to go the full distance toward "legalisms" and install a proceeding entirely analogous to a court, with all its attendant features, including the jury. As indicated at the beginning of this memorandum, the appropriate analogy is not to the actions of a court, but to administrative adjudication. The installation and management of a jury system is no simple thing.
It involves refined procedures for the selection of the jury, challenge of jurors (for cause and peremptorily), keeping extraneous information from jurors, and instructing the jury. This last aspect is particularly technical. The development of a system of formal jury instructions, which would be necessary were juries to be used, would add a very considerable burden to the hearing provision. It would probably make hearings impossible in all cases unless counsel were present on both sides.

While these procedures authorize counsel, they do not require counsel to be present, and it is anticipated (and hoped) that the presence of counsel will be the exception rather than the rule in student disciplinary proceedings.

What has been said goes to the problems of hearing panel and jury systems with respect to fact finding and adjudication. The basic reasons advanced for the inclusion of a student panel at any level, as they have been articulated to us, is not the expertise of the individuals who might sit on it, but rather the opportunity for students to have a meaningful participation in a process through which other students are disciplined. It has been suggested that it is possible to provide that opportunity without the problems which have been experienced with the panel system. One way to do it is through a panel established to advise the president on the disciplinary consequences to be drawn from the fact as established by the Hearing Officer. The provision in Section 11-a, which is optional for each college to apply or not as it chooses, would do just that. In making his final decision, the president would have the Hearing Officer's findings of fact, his determination as to which grounds of discipline are established, if any, his recommendation as to discipline, and the recommendation of a panel on the issue of discipline.

It is recognized that there are certain problems inherent in establishing a review panel even along the lines of the suggestions which led to Section 11-a. It may be that experience will indicate that no panel is feasible. At face, it would appear that it is possible for such a panel to enhance the efficacy of the procedures. Section 11-a is included in recognition of the strong suggestions we have received from the CSCSPA and some of the colleges. If changes in this area are indicated, on the basis of experience, they can be made, as they can with respect to other aspects of the procedures.

12-c(1). This provision refers to Chapter 4.7 of Division 22 of the Education Code (Sections 31291-31294) relating to forfeiture of State aid to students. Several questions have been received as to why a special provision is made with respect to determinations under this section. The reason is that in this unique instance, the code requires adjudication by a board—that is, a panel made up of more than one individual. (The section
contains repeated references to a "hearing board" and in one instance refers to a "majority vote".) In the event state financial aid in a particular case is terminated as a result of any other provision, this section would become moot. Thus, for example, if federally supported financial aid is terminated, that termination would require termination of State aid which is furnished on a matching basis to the federal program. Similarly, if a student is found by these procedures not to have committed an "act likely to disrupt the peaceful conduct of the activities of . . . [the] campus", and was acquitted of a criminal charge arising out of the same events, the operative facts for Education Code Section 31292 would not exist. In either case, no proceeding would be required under Education Code Sections 31291 and 31292. It is only where the student is found to have committed such acts, or is convicted of such a crime, and where state financial aid had not been otherwise terminated, that a proceeding must be held before a hearing board as provided in this Section. Should it appear that this situation will occur in a particular case, it is suggested that the Coordinator discuss the matter with the attorney assigned to the college.

13-b. (Denial or qualification of admission.)
Proceedings under this section can be handled either through the hearing officer process as set out in Section 10-c, or through an administrative officer as set out in Section 6. The administrative officer may be, but does not have to be, an individual in the Office of Admissions and Records.