

Policy 4.40 **Student Code of Conduct, Discipline, and Due Process**

The purpose of this procedure is to provide a prompt and equitable means to address violations of the Code of Student Conduct, which ensures to the student or students involved the due process rights guaranteed them by state and federal constitutional protections. This procedure will be used in a fair and equitable manner, and not for purposes of retaliation. It is not intended to substitute for criminal or civil proceedings that may be initiated by other agencies.

These procedures are specifically not intended to infringe in any way on the rights of students to engage in free expression as protected by the state and federal constitutions, and by Education Code Section 76120, and will not be used to punish expression that is protected.

A student excluded for disciplinary reasons from one college in the Peralta Community College District may be denied enrollment into other colleges in the District, depending on the specific form of discipline. The President of a college may also deny admission to a student suspended or excluded for disciplinary reasons from other colleges or universities.

**A. Student Code of Conduct**

Students are responsible for complying with all college regulations and for maintaining appropriate course requirements as established by the instructors.

**Disciplinary action** may be imposed on a student for violation of college rules and regulations, the *California Education Code*, *California Penal Code*, and the *California Administrative Code*. Student misconduct may result in disciplinary action by the college and prosecution by civil authorities. [Student misconduct may also result in disciplinary action that is applicable to other college campuses and central administrative offices at the Peralta Community College District.](#) Misconduct that may result in disciplinary action includes, but is not limited to, the following violations:

1. Violation of District policies or regulations including parking and traffic regulations (subject to Education Code Section 76036), policies regulating student organizations, and time, place and manner regulations in regard to public expression.
2. Willful misconduct which results in injury or death of any person on college-owned or -controlled property, or college-sponsored or supervised functions; or causing, attempting to cause, or threatening to cause physical injury to another person.

3. Conduct which results in cutting, defacing, damaging, or other injury to any real or personal property owned by the college or to private property on campus.
4. Stealing or attempting to steal college property or private property on campus; or knowingly receiving stolen college property or private property on campus.
5. Unauthorized entry to or use of college facilities.
6. Committing or attempting to commit robbery or extortion.
7. Dishonesty such as cheating, plagiarism (including plagiarism in a student publication), forgery, alteration or misuse of college documents, records, or identification documents, or furnishing false information to the college.
8. The use, sale, or possession on campus of, or presence on campus under the influence of, any controlled substance, or any poison classified as such by Schedule D in Section 4160 of the Business and Professions Code or any controlled substance listed in California Health and Safety Code Section 11053 *et seq.*, an alcoholic beverage, or an intoxicant of any kind; or unlawful possession of, or offering, arranging or negotiating the sale of any drug paraphernalia, as defined in California Health and Safety Code Section 11014.5.
9. Possession, sale or otherwise furnishing any firearm, knife, explosive or other dangerous object, including but not limited to any facsimile firearm, knife or explosive, unless, in the case of possession of any object of this type, the student has obtained written permission to possess the item from an authorized college employee.
10. Willful or persistent smoking in any area where smoking has been prohibited by law or by regulation of the governing board.
11. Lewd, indecent, or obscene conduct or expression on college-owned or -controlled property, or at college sponsored or supervised functions; or engaging in libelous or slanderous expression; or expression or conduct which so incites students as to create a clear and present danger of the commission of unlawful acts on college premises, or substantial disruption of the orderly operation of the college.
12. Disruptive or insulting behavior, willful disobedience, habitual profanity or vulgarity; or the open and persistent defiance of the authority of, refusal to comply with directions of, or persistent abuse of, college employees in the performance of their duty on or near the school premises or public sidewalks adjacent to school premises.
13. Obstruction or disruption of teaching, research, administrative procedures or other college activities.

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14. Committing sexual harassment as defined by law or by college policies and procedures; or engaging in harassing or discriminatory behavior based on race, sex, religion, age, national origin, disability, or any other status protected by law.
15. Persistent, serious misconduct where other means of correction have failed to bring about proper conduct.

*In accordance with Education Code Section 76234, the results of any disciplinary action or appeal in connection with any alleged sexual assault, physical abuse or threat of the same shall be made available within 3 school days of the results, to the alleged victim, who shall keep such information confidential.*

#### **B. Forms of Discipline:**

Students facing disciplinary action are subject to any of the following actions:

Written or verbal reprimand. An admonition to the student to cease and desist from conduct determined to violate the Code of Student Conduct. Written reprimands may become part of a student's permanent record at the college. A record of the fact that a verbal reprimand has been given may become part of a student's record at the college for a period of up to one year.

Probation. A period of time specified for observing and evaluating a student's conduct, with or without special conditions. Probation will be imposed for a specific period of time; the student is considered removed from probation when the period expires. Violation of any conditions during the period of probation may be cause for further disciplinary action.

Loss of Privileges and Exclusion from Activities. Exclusion from participation in designated privileges and extracurricular activities for a specified period of time. Violation of any conditions or Code of Student Conduct during the period of sanction may be cause for further disciplinary action.

Educational Sanction. Work, research projects, counseling, or community service projects may be assigned. Violation of any requirements of assignment or Code of Student Conduct during the period of sanction may be cause for further disciplinary action.

Treatment Requirement. Require enrollment in anger management, drug and alcohol rehabilitation treatment. Such requirement must receive prior approval from the Vice President of Student Services (or designee).

Group Sanction. Sanctions for the misconduct of groups or organizations may include temporary or permanent revocation or denial of group registration as well as other appropriate sanctions.

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Removal from Class. Exclusion of the student by an instructor for the day of the removal and the next class meeting. Instructor must immediately report the removal to the Vice President of Student Services (or designee).

Exclusion from Areas of the College. Exclusion of a student from specified areas of the campus. Violation of the conditions of exclusion or Code of Student Conduct during the period of exclusion may be cause for further disciplinary action.

Withdrawal of Consent to Remain on Campus. Withdrawal of consent by the Campus Police for any person to remain on campus in accordance with California Penal Code Section 626.4/626.6 where the Campus Police has reasonable cause to believe that such person has willfully disrupted the orderly operation of the campus. Any person as to whom consent to remain on campus has been withdrawn who knowingly reenters the campus during the period in which consent has been withdrawn, except to come for a meeting or hearing, is subject to arrest.

Short-term Suspension. Exclusion of the student by the President (or designee) for good cause from one or more classes for a period of up to ten consecutive days of instruction.

Long-term Suspension. Exclusion of the student by the President (or designee) for good cause from one or more classes for the remainder of the school term or school year, or from all classes and activities of the college and District for one or more terms.

Expulsion. Exclusion of the student by the Board of Trustees from all colleges in the District.

Disciplinary action may be imposed on a student by:

1. A college faculty member who may place a student on probation or remove the student from class and/or a college activity for the remainder of that class/activity period.
2. The President (or designee) who may impose any form of discipline, including summarily suspending a student when deemed necessary for the welfare and safety of the college community.
3. The President who may recommend "expulsion" to the Board of Trustees.
4. The Board of Trustees who may terminate a student's privilege to attend any college of the District.

### **C. Due Process Rights for Suspensions and Expulsions**

#### **Definitions:**

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Student. Any person currently enrolled as a student at any college or in any program offered by Peralta Community College District.

Faculty Member. Any instructor (an academic employee of the District in whose class a student subject to discipline is enrolled), counselor, librarian, or any academic employee who is providing services to the student.

Day. A day during which the District is in session and regular classes are held, excluding Saturdays, Sundays, and District holidays.

Written Notice/Written Decision. Notice sent by personal service or by registered or certified mail with return receipt requested via the United States Postal Service.

### **Short-term Suspensions, Long-term Suspensions, and Expulsions:**

Before any disciplinary action to suspend or expel is taken against a student, the following procedures will apply:

Notice. The Vice President of Student Services (or designee) will provide the student with written notice of the conduct warranting the discipline. The written notice will include the following:

- The specific section of the Code of Student Conduct that the student is accused of violating.
- A short statement of the facts (such as the date, time, and location) supporting the accusation.
- The right of the student to meet with the Vice President of Student Services (or designee) to discuss the accusation, or to respond in writing.
- The nature of the discipline that is being considered.

Time limits. The notice must be provided to the student within 5 days of the date on which the conduct took place or became known to the Vice President of Student Services (or designee); in the case of continuous, repeated or ongoing conduct, the notice must be provided within 5 days of the date on which conduct occurred or became known to the Vice President of Student Services (or designee) which led to the decision to take disciplinary action.

Conference Meeting. A student charged with misconduct must meet with the Vice President of Student Services (or designee) for a conference regarding the basis of the charge and the possible disciplinary action that may arise as a consequence. If the student fails to respond within 5 days after receipt of the written notice, the Vice President may proceed on the assumption that the charge(s) is (are) valid.

The conference with the Vice President of Student Services (or designee) will be for the purpose of:

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- a. Reviewing the written statement of the charge(s) as presented to the student;
- b. Providing a reasonable opportunity at the meeting for the student to answer the charge(s) verbally or in writing to the accusation;
- c. Informing the student in writing of possible disciplinary action that might be taken;
- d. Presenting to the student the College Due Process Procedures.

One of the following scenarios will occur:

- a. The matter is dismissed, in which case no public record of this incident shall be retained; however, an annual confidential report is required to be submitted to the Peralta Board of Trustees.
- b. A disciplinary action is imposed, and the student accepts the disciplinary action.
- c. A disciplinary action is imposed, and the decision of the Vice President of Student Services (or designee) is final due to the form of the discipline.
- d. A disciplinary action of a long-term suspension is imposed and the student does not accept the long-term suspension. The student must file at the Office of the President a written notice of intent to appeal to the Student Disciplinary Hearing Panel within 5 days of the written decision from the Vice President of Student Services (or designee).
- e. A recommendation for expulsion is made by the Vice President of Student Services (or designee) to the College President.

#### **Short-term Suspension.**

Within 5 days after the meeting described above, the Vice President of Student Services (or designee) shall decide whether to impose a short-term suspension, whether to impose some lesser disciplinary action, or whether to end the matter. Written notice of the Vice President of Student Services' (or designee's) decision shall be provided to the student. The written notice will include the length of time of the suspension, or the nature of the lesser disciplinary action. The Vice President of Student Services' (or designee) decision on a short-term suspension shall be final.

#### **Long-term Suspension.**

Within 5 days after the meeting described above, the Vice President of Student Services (or designee) may decide to impose a long-term suspension. Written notice of the Vice President of Student Services' (or designee) decision shall be provided to the student. The written notice will include the right of the student to request a formal hearing and a copy of the College Student Discipline (Due Process) Procedures describing the procedures for a hearing.

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**Expulsion.**

Within 5 days after the meeting described above, the Vice President of Student Services (or designee) may decide to recommend expulsion to the President. The Student Disciplinary Hearing Panel shall be convened to provide a recommendation to the President. The President shall then decide whether to make a recommendation of expulsion to the Chancellor and Board of Trustees. Written notice of the President's (or designee) decision to recommend expulsion shall be provided to the student. The written notice will include the right of the student to a formal hearing with the Board of Trustees before expulsion is imposed, and a copy of the College Student Discipline (Due Process) Procedures describing the procedures for a hearing.

**Hearing Procedures:**

Request for Hearing. Within 5 days after receipt of the Vice President of Student Services' (or designee's) decision regarding a long-term suspension, the student may request a formal hearing. The request must be made in writing to the President (or designee). Any charge(s) to which the student does not respond shall be deemed valid.

Any recommendation for expulsion by the Vice President of Student Services (or designee) shall be automatically reviewed by the Student Disciplinary Hearing Panel.

Schedule of Hearing. The formal hearing shall be held within 10 days after a written request for hearing is received. Student's failure to confirm attendance at hearing or failure to appear at the hearing without reasonable cause constitutes waiver of the student's right to appeal. The formal hearing timeline may be tolled (postponed) pending a formal investigation of any discrimination claims by or against the student. Such investigation must be concluded no later than 90 calendar days as required by law.

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Student Disciplinary Hearing Panel. The hearing panel for any disciplinary action shall be composed of one faculty (selected by the President of the Faculty Senate), one classified (selected by the President of the Classified Senate), one administrator (selected by the President of the College) and one student (selected by the Associated Students).

*The President (or designee), at the beginning of the academic year, will establish the panel, along with alternates. The chair of the committee will be appointed by the President.*

Hearing Panel Chair. The President (or designee) shall appoint one member of the panel to serve as the chair. The decision of the hearing panel chair shall be final on all matters relating to the conduct of the hearing unless there is a vote by two other members of the panel to the contrary.

Conduct of the Hearing.

The members of the hearing panel shall be provided with a copy of the accusation against the student and any written response provided by the student before the hearing begins.

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The facts supporting the accusation shall be presented by a college representative who shall be the Vice President of Student Services.

The college representative and the student may call witnesses and introduce oral and written testimony relevant to the issues of the matter.

Formal rules of evidence shall not apply. Any relevant evidence shall be admitted.

Unless the hearing panel determines to proceed otherwise, the college representative and the student shall each be permitted to make an opening statement. Thereafter, the college representative shall make the first presentation, followed by the student. The college representative may present rebuttal evidence after the student completes his or her evidence. The burden shall be on the college representative to prove by substantial evidence that the facts alleged are true.

The student may represent himself or herself, and may also have the right to be represented by a person of his or her choice, except that the student shall not be represented by an attorney unless, in the judgment of the hearing panel, complex legal issues are involved. If the student wishes to be represented by an attorney, a request must be presented not less than 5 days prior to the date of the hearing. If the student is permitted to be represented by an attorney, the college representative may request legal assistance. The hearing panel may also request legal assistance; any legal advisor provided to the panel may sit with it in an advisory capacity to provide legal counsel but shall not be a member of the panel nor vote with it.

Hearings shall be closed and confidential unless the student requests that it be open to the public. Any such request must be made no less than 5 days prior to the date of the hearing.

In a closed hearing, witnesses shall not be present at the hearing when not testifying, unless all parties and the panel agree to the contrary.

The hearing shall be recorded by the District either by tape recording or stenographic recording, and shall be the only recording made. No witness who refuses to be recorded may be permitted to give testimony. In the event the recording is by tape recording, the hearing panel chair shall, at the beginning of the hearing, ask each person present to identify himself or herself by name, and thereafter shall ask witnesses to identify themselves by name. Tape recording shall remain in the custody of the District at all times, unless released to a professional transcribing service. The student may request a copy of the tape recording.

All testimony shall be taken under oath; the oath shall be administered by the hearing panel chair. Written statements of witnesses under

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penalty of perjury shall not be used unless the witness is unavailable to testify. A witness who refuses to be tape-recorded is not unavailable.

Within 10 days following the close of the hearing, the hearing panel shall prepare and send to the President (or designee) a written recommendation regarding the disciplinary action to be imposed, if any. The recommendation shall include specific factual findings regarding the accusation, and shall include specific conclusions regarding whether any specific section of the Standards of Student Conduct were violated. The decision shall be based only on the record of the hearing, and not on matter outside of that record. The record consists of the original accusation, the written response, if any, of the student, and the oral and written evidence produced at the hearing.

President's (or designee's) Decision:

Long-term suspension. Within 5 days following receipt of the hearing panel's recommendation, the President (or designee) shall render a final written decision based on the recommendations of the hearing panel and the Vice President of Student Services (or designee). If the President (or designee) modifies or rejects the hearing panel's recommendation, the President shall review the record of the hearing, and shall prepare a written decision that contains specific factual findings and conclusions. The decision of the President (or designee) shall be final.

Expulsion. Within 5 days following receipt of the hearing panel's recommendation, the President (or designee) shall render a written decision either to recommend expulsion or to impose a lesser form of discipline. If the President (or designee) modifies or rejects the hearing panel's decision, he or she shall review the record of the hearing, and shall prepare a written decision that contains specific factual findings and conclusions. If the President (or designee) decides to recommend expulsion, such recommendation shall be forwarded to the Chancellor and Board of Trustees.

Chancellor's Decision:

A student may, within 10 days of the President's decision to impose long-term suspension or to recommend expulsion, appeal the decision in writing to the Chancellor. For long-term suspensions, the Chancellor (or designee) shall issue a written decision to the parties and the representatives within ten days of the receipt of the President's decision. For expulsions, the Chancellor shall forward the President's recommendation to the Board of Trustees within 10 days and provide an independent opinion as to whether he or she also recommends expulsion.

Board of Trustees' Decision:

Long-Term Suspension Appeal:

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The Chancellor's (or designee's) decision regarding long-term suspension may be appealed to the Board of Trustees within 10 days of receipt of the Chancellor's decision. The Board will consider the appeal request, along with the Chancellor's decision, at the next regularly scheduled meeting. The Board may reject the appeal request and uphold the Chancellor's decision, or accept the appeal and conduct a hearing. The Board's procedures for hearing of long-term suspension will be similar to the procedures required for expulsion hearings.

Expulsion:

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The Board of Trustees shall consider any recommendation from the President for expulsion at the next regularly scheduled meeting of the Board after receipt of the recommended decision.

The Board shall consider an expulsion recommendation in closed session, unless the student has requested that the matter be considered in a public meeting in accordance with these procedures. (Education Code Section 72122)

The student shall receive written notice at least three days prior to the meeting of the date, time, and place of the Board's meeting.

The student may, within 48 hours after receipt of the notice, request that the hearing be held as a public meeting.

Even if a student has requested that the Board consider an expulsion recommendation in a public meeting, the Board will hold any discussion that might be in conflict with the right to privacy of any student other than the student requesting the public meeting in closed session.

The Board may accept, modify or reject the findings, decisions and recommendations of the President (or designee) and Chancellor (or designee). If the Board modifies or rejects the decision, the Board shall review the record of the hearing, and shall prepare a written decision that contains specific factual findings and conclusions. The decision of the Board shall be final.

The final action of the Board on the expulsion shall be taken at a public meeting, and the result of the action shall be a public record of the District.

Time Limits:

Any times specified in these procedures may be shortened or lengthened if there is mutual concurrence by all parties.

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Student Grievance:

Students who believe that they have been improperly subjected to any of the disciplinary measures stated in this policy may file a Student Grievance with the Vice President of Student Services in accordance with Board Policy 4.43.

Students in Allied Health Programs:

Board Policy 4.43B may apply in lieu of this Board Policy to students who are enrolled in the Allied Health program for clinical performances.

**Source of Law:**

California Education Code Sections 66300, 66301

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**Approved by Board of Trustees: April 27, 1993**

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**Revised by the Board of Trustees: September 16, 2008**

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