

GRADE GRIEVANCE POLICY

I. GENERAL PROVISIONS

A. Grade Grievance

By law, the instructor is solely responsible for the grades assigned; no instructor

may be directed to change a grade except in certain narrow circumstances authorized by California Education Code, Section 76224(a).

B. California Education Code Section 76224(a)

When grades are given for any course of instruction taught in a community college district, the grade given to each student shall be the grade determined by the instructor of the course and the determination of the student's grade by the instructor, in the absence of mistake, fraud, bad faith, or incompetence, shall be final.

This policy provides the procedures for challenging grades given in any course of instruction offered in the District. This policy does not apply to the following:

1. The challenge process for prerequisites, corequisites, advisories, and limitations on enrollment.
2. Student discipline.
3. Employee discipline.
4. Challenges to established district policies and administrative regulations.
5. Financial claims against the District.

II. DEFINITIONS

A. Mistake: an unintentional act, omission or error by the instructor or the college.

B. Fraud: a deception deliberately practiced in order to secure unfair or unlawful gain.

- C. Bad Faith: an intent to deceive or to act in a manner contrary to law and/or a grade assigned because of a student's protected characteristics contrary to Education Code Section 66250 et. seq. (including, but not limited to, Section 66270) and Title 5, California Code of Regulations, Section 593000 et. Seq. If, pursuant to the discrimination and harassment complaint procedure it is determined that a grade was the results of discrimination or harassment the grade may be changed as a remedy for the discrimination or harassment.
- D. Incompetence: a lack of ability, legal qualification, or fitness to discharge a required duty.
- E. Day: Unless otherwise provided, day shall mean any day on which the District administrative offices are open for business. The deadlines contained herein may be modified by mutual agreement of the parties.
- F. Student: A currently enrolled student or a former student. Former students shall be limited to grievances relating to course grades to the extent permitted by Education Code Section 76224(a) and the provisions herein.
- G. Respondent: Any person claimed by a grievant to be responsible for the alleged grievance.
- H. The College President: The President of the College or a designated representative of the College President.
- I. Ombudsperson: The College President shall appoint an employee who shall assist students in seeking resolution by informal means. This person shall be called an ombudsperson.

III. INFORMAL RESOLUTION

Any student who believes he or she has a grade grievance shall make a reasonable effort to resolve the matter on an informal basis prior to requesting a grievance hearing, and shall attempt to resolve the problem with the faculty member with whom the student has the grievance or that person's dean or designee. If informal resolution of the problem is not possible, the student may elect to pursue a formal grievance pursuant to the procedures herein.

IV. FORMAL GRIEVANCE PROCESS

A. Written Statement of Grievance

Any student who believes he or she has a grade grievance shall file a written, signed Statement of Grievance form stating the basis for the grade grievance

with the appropriate dean or designee no later than 45 days after the student knew or should have known of the grade in the course. The dean or designee shall provide a copy of the written Statement of Grievance form to the affected faculty member within 5 days after the form has been filed. The Statement of Grievance must be filed whether or not the student has initiated efforts at informal resolution, if the student wishes the grievance to become official. The faculty member shall not engage in any conduct that may be construed as retaliation for filing the grievance. Filing a grievance is a protected activity.

B. Request for a Grievance Hearing

The student may request a grievance hearing after the written Statement of Grievance form has been filed. A request for a grievance hearing shall be filed with the appropriate dean or designee on a Request for Grievance Hearing form within 30 days after filing the Statement of Grievance.

The student may withdraw his/her written Statement of Grievance and/or Request for a Grievance Hearing at any time. The notice of withdrawal shall be in writing and filed with the appropriate dean or designee. The dean or designee shall notify the affected faculty member in writing within 5 days that the student has withdrawn the grievance and no further action may be taken.

C. Grievance Hearing Panel

1. The Grievance Hearing Panel shall consist of the appropriate dean or designee, a representative appointed by the Associated Student Government and a faculty member appointed by the Academic Senate.
2. Within 15 days following receipt of the Request for Grievance Hearing, the Hearing Panel shall meet to select a Chair and to determine on the basis of the Statement of Grievance whether there is sufficient grounds for a hearing.
3. The determination of whether the Statement of Grievance presents sufficient grounds for a hearing shall be based on the following:
 - a. The Statement of Grievance contains facts which, if true, would constitute a grievance under these procedures and;
 - b. The grievant is a student as defined in these procedures and;
 - c. The grievant is personally and directly affected by the alleged grievance and;
 - d. The grievance was filed in a timely manner and;

- e. The grievance is not, based on the allegations contained in the written grievance, frivolous, without foundation or filed for the purposes of harassment. In determining whether a grievance is frivolous, without foundation or filed for purposes of harassment, the panel shall not at this phase, consider facts outside the grievance.
4. If the Grievance Hearing Panel determines that the written Statement of Grievance does not meet each of the aforementioned requirements, within 5 days of the Hearing Panel decision, the Chair shall notify the student in writing that the Request for a Grievance Hearing has been rejected. The notice shall contain the specific reasons for the rejection of a hearing and the procedures for appeal (See Section V.A. 1 herein).
5. If the Grievance Hearing Panel determines that the written Statement of Grievance meets each of the aforementioned requirements, the Chair shall schedule a grievance hearing no later than 45 days from the decision of the Hearing Panel. All parties to the grievance shall be notified in writing by the Chair of the date, time and location of the grievance hearing 10 days prior to the grievance hearing.

D. Hearing Procedures

1. The decision of the Grievance Hearing Panel Chair shall be final on all matters the conduct of the hearing unless there is a vote of a majority of the other members of the panel to the contrary.
2. Each party to the grievance may call witnesses and introduce oral and written testimony relevant to the issues alleged in the grievance. Formal rules of evidence shall not apply. Any relevant evidence shall be admitted. The parties shall exchange exhibits and lists of witnesses 5 days prior to the hearing.
3. Unless the Grievance Hearing Panel determines to proceed otherwise, each party to the grievance shall be permitted to make an opening statement. Thereafter, the grievant shall make the first presentation, followed by the respondent. The grievant may present rebuttal evidence after the respondent's evidence. The burden shall be on the grievant to prove by a preponderance of the evidence that the facts alleged are true and that a grievance has been established as specified above.
4. Each party to the grievance may represent himself or herself or may be represented by a person of his or her choice. A party shall not be represented by an attorney unless notification is presented to the Chair 10 days prior to the date of the hearing. If one party is permitted to be represented by an attorney, any other party shall have the right to be represented by an attorney. The Chair of the Hearing Panel may continue

the hearing in order to accommodate counsel upon a showing of good cause. The Hearing Panel may also request legal assistance through the College President. Any legal advisor provided to the Hearing Panel sits in an advisory capacity but shall not be a member of the Panel nor vote with it.

5. Hearing shall be closed and confidential. Witnesses shall not be present at the hearing when not testifying.
6. The hearing shall be recorded by the Hearing Panel Chair by recording or stenographic recording and this document shall be the only recording made of the proceedings. No witness who refused to be recorded may be permitted to give testimony. At the onset of the hearing the Chair shall ask each person present to identify themselves by name and thereafter shall ask witnesses to identify themselves by name. The recording shall remain in the custody of the College at all times, unless released to a professional transcribing service. Any party may request a copy of the recording at their own expense.
7. All Testimony shall be taken under oath administered by the Chair. Written statements of witnesses under penalty of perjury shall not be used unless the witness is unavailable to testify. A witness who refuses to be tape recorded shall be considered to be unavailable.

E. Hearing Panel Decision

Within 15 days following the close of the hearing, the Grievance Hearing Panel shall prepare a written decision which shall include specific factual findings regarding the grievance and the specific conclusions regarding whether a grievance has been established as defined above. Where appropriate the decision shall articulate the factual basis for any credibility determinations necessary to the panel's decision. The Hearing Panel decision shall also include a specific statement regarding the relief to be afforded the grievant if any. The Hearing Panel decision shall be based only on the record of the hearing, and not on matters outside the record. The record consists of the written Statement of Grievance, any written response by the respondent and the oral and written evidence produced at the hearing.

V. APPEAL PROCESS

A. Written Statement of Appeal

1. Within 10 days following the Grievance Hearing Panel decision regarding the merits of the grievance, any party to the grievance may file a written Statement of Appeal with the College President. The written Statement of

Appeal shall state the specific basis for the appeal and shall be sent to all parties.

2. All parties may submit a written response to the appeal to the College President within 10 days of the filing of the written Statement of Appeal.
3. The College President shall review the record of the hearing and the documents submitted in connection with the appeal, but shall not consider any matters outside the formal record. The College President may decide to sustain, reverse or modify the decision of the Grievance Hearing Panel. The College President's decision shall be in writing and shall include a statement of reasons for the decision. The College President's decision shall be final.
4. The decision on appeal shall be reached within 20 days after receipt of the appeal documents. Copies of the College President's decision shall be sent to all parties.
5. Within 10 days following the Grievance Panel's decision regarding whether the Statement of Grievance warrants a formal Grievance Hearing, any party to the grievance may file a written Statement of Appeal with the College President. The College President shall review the Statement of Grievance and the Request for a Grievance Hearing in accordance with the requirements for a grievance provided herein but shall not consider any other matters. The College President's decision whether to grant a grievance hearing shall be final and not subject to further appeal. The filing of an appeal pursuant to this provision shall stay all proceedings on the underlying grievance until a decision is reached by the College President. If the College President's decision is that the matter shall proceed to a hearing the time lines shall be extended by the period of time the matter was under consideration with the College President.

STATEMENT OF GRIEVANCE
(Board Policy 5505: Grade Grievance Policy)

Pursuant to California Education Code Section 76224(a) and Board Policy 5505, Section I. B., when grades are given for any course of instruction taught in a community college district, the grade given to each student shall be the grade determined by the instructor of the course and the determination of the student's grade by the instructor, in the absence of mistake, fraud, bad faith, or incompetence, shall be final. (Please see below for the definitions of mistake, fraud, bad faith, or incompetence pursuant to BP 5505, Section II. A. B. C. D.)

Please state the basis of the grade grievance based on the definitions of mistake, fraud, bad faith or incompetence as provided in BP 5505, Section II, A. B. C. D.). Attach extra pages if necessary, sign, and date this form. This form must be filed with the dean no later than 45 days after the student knew or should have known of the grade in the course. The dean shall provide a copy of the Statement of Grievance form to the affected faculty member(s) within 5 days after the form has been filed. (See Board Policy 5505, Section IV. A.)

BP 5505 Section II. Definitions (Check One)

- A. **Mistake**: an unintentional act, omission or error by the instructor or the college.
- B. **Fraud**: a deception deliberately practiced in order to secure unfair or unlawful gain.
- C. **Bad Faith**: an intent to deceive or to act in a manner contrary to law and/or a grade assigned because of a student's protected characteristic contrary to Education Code Section 66250, et. seq., including but not limited to, Section 66270 and Title 5, California Code of Regulations, Section 59300 et. seq.
- D. **Incompetence**: a lack of ability, legal qualification, or fitness to discharge a required duty.

Basis for your grievance (explain):

Submitted By: Student's Signature

Date

Received By: Dean's Signature

Date

REQUEST FOR A GRIEVANCE HEARING
(Board Policy 5505: Grade Grievance Policy)

Pursuant to Board Policy 5505, Section IV. B., a request for a grievance hearing shall be filed with the dean on the Request for Grievance Hearing form within 30 days after filing the Statement of Grievance. (See Board Policy 5505 for Grade Grievance procedures)

Student's Name: _____

Student Number: _____

Telephone: _____

Email Address: _____

Instructor: _____

Course: _____

Ticket Number: _____

Term: _____

College: (Check one)

- Irvine Valley College**
- Saddleback College**
- ATEP**

I, _____, hereby request a grievance hearing based on BP 5505 (Section II. A. B. C. D.)

(Check one)

- Mistake**
- Fraud**
- Bad Faith**
- Incompetence**

Submitted By: Student's Signature

Date

Received By: Dean's Signature

Date

Statement of Appeal
(Board Policy 5505: Grade Grievance Policy)

Pursuant to Board Policy 5505, Section V. A., a request for an appeal shall be filed with the College President within 10 days following the Grievance Hearing Panel decision regarding the grievance. (See Board Policy 5505 for Grade Grievance procedures)

Student's Name: _____

Student Number: _____

Telephone: _____

Email Address: _____

Instructor: _____

Course: _____

Ticket Number: _____

Term: _____

College: (Check one)

- Irvine Valley College
- Saddleback College
- ATEP

I, _____, hereby request an appeal.

(Check one)

- Mistake
- Fraud
- Bad Faith
- Incompetence

Basis for your appeal (explain):

Submitted By: Student's Signature

Date

Received By: President's Signature

Date