

# MANUAL OF PROCEDURE

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**PROCEDURE NUMBER:** 4030

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**PROCEDURE TITLE:** Student Disciplinary Procedures

**STATUTORY REFERENCE:** FLORIDA STATUTES 1006.60 AND 1006.62

**BASED ON POLICY:** IV-5 Student Rights and Responsibilities

**EFFECTIVE DATE:** August 1, 1977

**LAST REVISION DATE:** May 12, 2010

**LAST REVIEW DATE:** May 12, 2010

## **I. PURPOSE**

All alleged student violations of the Code of Conduct of the College are referred to the Office of the Student Dean.

## **II. PROCEDURE**

### Investigation

A full investigation by the Student Dean of the alleged violation must be conducted. If the investigator questions the suspected student during the course of the investigation, the student must be informed, prior to questioning, that he/she has the right to remain silent and that anything said may be used against him/her. The investigator may not coerce admissions of guilt from a suspected student or require the disclosure of information about the conduct of other suspected persons.

If the investigator believes that the facts of the case substantiate the allegations, the investigator will notify the student or make a reasonable attempt to notify the student in writing to appear at a specified time for a Preliminary Hearing (described below). Notice of this Hearing will be given to the student or sent to the address last furnished by the student to the Registrar. If a student does not have an excused absence and does not appear at the Preliminary Hearing, the student may be charged without a Preliminary Hearing. If during an investigation interview the student freely admits guilt of the reported violation, the Preliminary Hearing may take place at that time and the student can be charged at its conclusion.

### Preliminary Hearing

At the Preliminary Hearing the investigator will explain to the student the elements of due process afforded him/her:

1. Inform the student of the alleged violation(s) of which the student is accused.
2. Advise the student of the right to remain silent and that anything the student says may be used against him/her.
3. Advise the student that he/she can make any statements or explanations.
4. At the conclusion of the Preliminary Hearing the investigator shall either:  
(1) advise the student that the matter is dismissed; or (2) advise the student that the College will charge him/her with violating the Code of Conduct.

If it is decided that the College will charge the student with violation(s) of a specific regulation(s) from the Code of Conduct, the investigator will personally present the student with the written charge(s) at the conclusion of the Preliminary Hearing.

If the student does not appear at his/her Preliminary Hearing, the charges may be sent to the last local address provided to the Registrar by the student, or the investigator may present the charges to the student by personal delivery. The mailing of the charges may be verified by a certified mail RETURN receipt requested or registered letter. If a student fails to receive the notification, a dean's hold will be placed on any subsequent registration until the matter is resolved.

### Formal Charging

The Notice of Charge(s) should inform the student of:

1. The policy or regulation alleged to have been violated in sufficient detail to allow the student to prepare a defense.
2. The possibility of expulsion, suspension, or other disciplinary sanctions.
3. The right not to be compelled to testify against oneself.
4. The right to a hearing as established under these disciplinary procedures.
5. The right to examine the evidence and to cross-examine witnesses appearing and testifying against him/her and to offer witnesses and evidence in his/her behalf. Such evidence must be requested no less than 48 hours before the hearing.

6. The right of an advisor of his/her choice, at his/her own expense, acting in an advisory capacity only; the advisor may not speak. The name and address of the advisor shall be provided to the Student Dean's Office no later than 24 hours prior to a hearing. Only the charged student is allowed to speak at a College hearing.
7. The right to enter a plea of guilty or not guilty within three school days after the charging.
8. If the Student fails to enter a plea within three school days, a plea of not guilty will be entered and a hearing date will be set by the Student Dean.
9. The right to a closed hearing unless the student requests that it be opened to the public, subject to applicable laws.
10. The right to waive a hearing before a Campus Discipline Committee and have the Student Dean hear the case.

#### Public Court Cases

1. If a student is charged by public authorities with an act that is also a violation of a College policy or procedure, the College may charge the student after a preliminary Hearing and stay its proceedings pending the outcome of the case. If the student cannot appear at the Preliminary Hearing, charges will be sent to the last local address provided to the College by the student. The verdict or finding in a public court shall be used as a finding of fact in the College's disciplinary proceeding for the violation of College policy.
2. A plea of guilty in the court by the charged student shall operate as a conclusive finding of guilty under these disciplinary proceedings even when adjudication of guilt is withheld. This will not apply if the plea was entered to a charge based upon different facts than those needed to support charges pending at the College.
3. If a student is charged with an offense by public authorities, and the offense is made on the basis of charges under the College's disciplinary procedures, the finding in court will be the same finding used at the College, even if the student pleads guilty to a lesser charge.
4. If no verdict or finding is established in court, the College may proceed with the case according to these disciplinary procedures.
5. If the student is found guilty in a public court based on the same or similar facts arising at the College, the College will immediately notify the student to appear before the Student Dean for a penalty assessment.

### Pleas

Within three school days after a student receives Notice of Charge(s), the student shall deliver to the Student Dean's Office a plea of guilty or not guilty. The student may enter the plea by filling out the appropriate section on the Notice of Charge(s) and returning the Notice to the Student Dean's Office. If a student does not enter a plea within the prescribed three school days, the student shall be deemed to have pleaded not guilty. The following procedures shall apply for each of the available pleas:

1. Plea of guilty: If the student enters a plea of guilty, the penalty assessment phase shall proceed according to campus regulations.
2. Plea of non-guilty: If the student enters, or is deemed to have entered a plea of not guilty, he/she shall have a right to an administrative hearing or an appearance before the Campus Discipline Committee. The Hearing Officer shall set the time and place for the hearing. The hearing should be held within 14 business days of the entry of a not guilty plea. The Hearing Officer may, at his/her own discretion, extend the date of the hearing. A student may waive the right to a Campus Discipline Committee hearing and have the case heard before a Student Dean. Notwithstanding the terms herein, if a student is simultaneously charged in a public court proceeding with a similar matter the College may stay a preliminary hearing pending the outcome of the public court case.

### Preliminary Matters

The College shall exchange witness and document lists for the hearing no later than 48 hours prior to the hearing. The Hearing Officer shall have the right to determine the relevance of all material and witnesses to the hearing.

### Campus Discipline Committee

This Committee consists of the following members appointed by the Campus President:

- 2 Students (Names submitted by the Student Government Association)
- 2 Faculty (Names submitted by the Academic Dean)
- 2 Administrators, one of who shall be the Dean of Students, or the Dean's designee, and will serve as a Hearing Officer

The Hearing Officer is charged with the responsibility for maintaining proper decorum and order, and may exclude any person who, in the Hearing Officer's opinion, has no legitimate interest in the hearing or whose conduct impedes or threatens to impede a fair and orderly hearing.

Each Committee member shall have one vote. The Hearing Officer will vote only in the event of a tie vote.

If a student challenges the appointment of a Committee member for cause because it is felt there may be a conflict of interest, the Hearing Officer shall have the right to make final

judgment on the matter. The Hearing Officer shall have the right to excuse for cause any faculty or student member of the Committee at any time, either upon the Hearing Officer's own initiative or at the request of the College or the charged student. If a Committee member is dismissed, or is unable to continue to serve, an appropriate alternate will take the member's place. The hearing will continue, and this individual will be brought current on matters to date. The Hearing Officer shall attach in writing to the final record of the hearing the reasons for dismissing any member of the Committee.

#### Committee Responsibilities

The Campus Disciplinary Committee will have the following responsibilities during a hearing for a case in which a plea of not guilty has been entered:

1. At the beginning of the hearing, to briefly explain to the student the manner in which the hearing will be conducted and to apprise the student of the consequences of giving false testimony.
2. To ensure, to the extent possible, that all questions asked and information offered are relevant to the question of guilt or innocence in the fact-finding portion of the hearing, and, if the student is found guilty, that information of a mitigation plea nature is reserved for the penalty recommending portion of the hearing.
3. To ensure that the accused student will have the right to examine evidence, to testify and to present evidence and witnesses. The student will have the right to hear and question all witnesses appearing and testifying against him/her.
4. To ensure that no statements against the accused student are considered unless the student has been advised of their content and of the names of those who made them, and unless the student has been given the opportunity to rebut unfavorable inferences that might be drawn.
5. To ensure that all relevant evidence is introduced before the Committee and that the decision of innocence or guilt will be based solely upon the evidence.
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7. To conduct the hearing in the following recommended manner and order:
  - a. Introduction of participants
  - b. Reading of the charge(s) by the Hearing Officer and advising the charged student of the possible penalties
  - c. Student's response to charges
  - d. Investigator's summary report of allegations
  - e. Student's summary of defenses to allegations
  - f. Introduction of College witness and/or exhibits with questions from panel, student charged, and investigator

- g. Introduction of student's witnesses and/or exhibits with questions from Committee, student charged and investigator
  - h. Questioning of investigator by charged student and Committee
  - i. Questioning of charged student by investigator and Committee
  - j. Closing statements by investigator and charged student.
8. At the conclusion of the fact-finding portion of the hearing, the hearing participants will be excused. Subject to applicable laws, the committee will consider the matter in a closed session based on the evidence presented and will make a determination as to the guilt or innocence of the student by majority vote.

If the accused student admits guilt during the fact-finding portion of the hearing, the Committee will immediately go into the penalty-recommending portion of the hearing.

9. If there is a finding of guilt, the Committee will inform the student of the finding and instruct the student that the penalty recommendation portion of the procedures allows the student, prior to the determination of the penalty to be recommended, the right to present any mitigating circumstances or other factors that may affect the penalty. After hearing the extenuating circumstances or other factors from the student and the investigator, the Committee will consider the information presented in closed session, render a recommendation as to a penalty, subject to applicable laws.
10. The student is informed that the recommended disciplinary action will be forwarded to the Student Dean, who will render the penalty decision. The student is instructed to make an appointment within three school days to receive the decision.
11. To compile for the Student Dean's Office a complete file of the case to include both an abstract and a verbatim record, such as a tape recording of the hearing, all written statements and exhibits utilized in the proceedings, and the Committee's decisions and penalty recommendation. A record of the Committee's final decision will be made. For purpose of appeal, the student alone shall have access to the record of the hearing, which must remain in the Student Dean's Office. The record of the hearing shall be available in the event an appeal is filed, subject to applicable laws.

#### Administrative Hearing

A student may elect to waive a hearing before a Campus Disciplinary Committee and have a hearing before the designated Student Dean. The same elements of due process as are applicable to Campus Discipline Committee hearings shall apply. If the Student Dean finds the accused student guilty, the penalty portion of the hearing will begin. Otherwise, at the conclusion of the hearing, the student is instructed to make an appointment with the Student Dean within three school days to receive a decision of guilt or innocence. If the student is found guilty, he/she shall have the right to appear before the Student Dean who is hearing the case to present any mitigating circumstances or other factors that may affect the penalty.

#### Effective Date of Penalties

Unless the Student Dean who delivers the penalty specifically states otherwise, all penalties shall be effective as of the date of the commission of the offense, even though the student may have attended classes and/or taken examinations during the interim.

#### Burden of Proof

The College shall have the burden of proving the student's guilt by a preponderance of the evidence.

#### Evidence at Hearings

The Hearing Officer may exclude evidence that is deemed to be irrelevant, immaterial, repetitious, incompetent, or untrustworthy in nature, and take other appropriate action to facilitate the orderly conduct of a fair hearing and a full and true disclosure of the facts.

#### Hearing in Absentia

If the student, after due notice, does not appear at the hearing, he can be tried in absentia. The College must meet the burden of proof before guilt can be found.

#### Hold on Re-Enrollment

If a student has been formally notified that he/she has an appointment for an investigatory meeting or if the student has been charged with a violation of College regulations as contained in the Code of Conduct and he/she fails to appear thereafter, either because of withdrawal from the College or for failure to complete the last term of enrollment, the Student Dean will place a hold on the student's future registration. This hold will prevent the student from re-enrolling at any campus of Miami Dade College. The College will notify the student in writing of this action, request that the student appear at the College to rectify the matter, and inform the student that he/she is not in good standing with the College.

#### Confidentiality of Hearing and Deliberations

Subject to applicable laws, the proceedings of the Campus Discipline Committee shall be regarded as confidential and no record of the proceedings shall be kept other than that of the abstract and verbatim record which is retained by the Student Dean's Office. The deliberations of the Committee as to innocence or guilt, or its discussions as to the recommended penalty are regarded as confidential and no other participants in the case shall be present during these deliberations. No record shall be made of the discussion or vote in these deliberations. Where a not guilty finding occurs, all records of the charges and proceedings shall be destroyed.

#### Postponements

The Campus Discipline Committee may postpone and/or recess a case if necessary at the request of the Committee or other parties involved in the case.

### Procedures Not Specifically Provided Herein

Additional procedures may be implemented by the Campus Discipline Committee provided that such additions are not precluded in these procedures and would serve to arrive at a full and true disclosure of the facts.

### Temporary Suspension

The Student Dean may temporarily suspend any student when: (1) the student is ordered by an administrator, officer or faculty member to cease and desist any activity that disrupts the orderly operation of the College; (2) the student persists in activity that is disruptive after receiving the warning and order, and the disruptive activity still constitutes a threat to the orderly operation of the College; and (3) for reasons relating to the physical or emotional safety and well-being of the student, other students, faculty or college property. The Student Dean shall decide on evidence seen or reported that the activity disrupts the orderly operation of the College or is a clear and present danger or impinges upon or invades the rights of others in the College community.

When a student is temporarily suspended as a result of a charge against him/her, he/she shall be entitled to petition the Campus President for a hearing after five business days following the original order of suspension. Within five business days of receipt of the request, the Campus President must hear the student. The jurisdiction of the Campus President in the matter of the temporary suspension is limited to the question of whether or not the suspension shall continue until a hearing is held on the merits of the case that caused the temporary suspension. If a hearing is not held within three school days as provided herein, the temporary suspension shall be automatically lifted, provided the student does not cause the delay. In the case of a student who is temporarily suspended and subsequently found innocent, he/she shall be allowed to make up, without prejudice, any classwork or examinations missed because of suspension.

### Disciplinary Sanctions

1. Community Service: disciplinary sanction that requires a student to complete mandatory campus community service hours, as designated by the Dean of Students or Campus Disciplinary Committee.
2. Restriction or revocation of privileges: temporary or permanent loss of privileges, including, but not limited to, the use of a particular College facility or parking privileges.
3. Restitution: reimbursement for damage to, or misappropriation of, property of the College or other persons. Reimbursement may take the form of appropriate service to repair or otherwise compensate for damages as directed by the Student Dean.
4. Final Disciplinary Probation: a disciplinary sanction serving notice to a student that his/her behavior is in flagrant violation of the College standards under which the following conditions exist:

- a. A sanction is for the remainder of the student's attendance at the College.
  - b. Another conviction of a violation of the College Code of Conduct will result in the imposition of the minimum sanction of suspension.
5. Disciplinary Probation: a disciplinary sanction serving notice to a student that his/her behavior is in serious violation of College standards and that continued enrollment depends upon the maintenance of satisfactory citizenship during the period of probation.

A time period is indicated for this probation. Students will be released from the Disciplinary Probation status after the specified time period has elapsed.

6. Disciplinary Censure: a disciplinary sanction serving notice to a student that his/her behavior has not met College standards. This sanction remains in effect for the duration of one complete term. Future violations of the College Code of Conduct, if occurring while Disciplinary Censure is in effect, could result in more serious disciplinary sanctions.
7. Temporary Suspension: action taken by the Student Dean that requires a student's temporary separation from the College. The Campus President shall determine whether or not the suspension shall continue until a hearing is held on the merits of the case that caused the temporary suspension. A student on temporary suspension is barred from visiting privileges and class attendance at any of the campuses of Miami Dade College.
8. Suspension: mandatory separation from the College for a period of time as specified in the order of suspension. A student who has been suspended is barred from enrolling at, or visiting, any of the campuses of Miami Dade College during the suspension. Students may re-enroll at the College when the suspension order has elapsed.
9. Dismissal: mandatory separation from the College with no promise of future readmission. An application for readmission will not be considered until such time as specified in the order of dismissal has elapsed. Readmission is subject to the approval of the Campus President. A student who has been dismissed is barred from enrolling at, or visiting, any of the campuses of Miami Dade College.

Other Appropriate Action: disciplinary action not specifically set out above but deemed proper and imposed by the Student Dean. These actions are deemed to be in support of more severe actions such as Dismissal, Suspension, Final Disciplinary Probation, Disciplinary Probation, and Disciplinary Censure.

#### Retention of Disciplinary Records

Disciplinary records of students are kept in a secure place by the Student Dean. The procedures followed are in accordance with federal and state regulations pertaining to the destruction of records. (Procedures 4085 and 4088)

### Appeals

A student found guilty of, or who pleads guilty to, an offense and has been sentenced by the Student Dean shall have the option to appeal on the basis of severity of penalty and/or violation of the student's rights as contained in these procedures within three school days of the sentencing. Any such appeal must be made no later than 10 days after issuance of the findings. All appeals will be taken before the Campus President or his/her designee.

Appeals must be made in writing and must contain a description of the specific errors upon which the appeal is based, or they must contain a statement that the penalty is too severe. Appeals in cases involving guilty pleas shall not place at issue any issue of fact or law previously settled by the guilty finding. Appeals in cases involving public court guilty pleas shall not place at issue any established facts of law ruled upon by the public court.

The Campus President will set a time and place for a hearing on the points raised by the appeal if a hearing is requested in the written appeal. After consideration of the facts presented by the student and the College, the Campus President shall issue a written determination either:


1. affirming the action of the Campus Discipline Committee and/or the Student Dean,
2. remanding the matter to a new Hearing Officer for a new hearing before a different Campus Discipline Committee, or
3. reducing the penalty, or
4. dismissing the charge(s) against the student.

### Final Appeals

Determination by the Campus President or his/her designee is final on behalf of the College and may not be further appealed.

### Administration of Discipline When Committee is Not in Operation

Whenever the Campus Discipline Committee is not in operation, such as during vacation or examination periods, and there is a not-guilty plea during that time, the case will be referred to the Student Dean for adjudication.

	5/12/2010
<b>PRESIDENT</b>	<b>DATE</b>