



MARICOPA
COMMUNITY COLLEGES

Office of the
General Counsel
Compliance

DOING “DUE PROCESS” IN STUDENT ACADEMIC AND CONDUCT ISSUES

The United States Constitution commands the granting of due process in two places. The Fifth Amendment says to the federal government that no one shall be "deprived of life, liberty or property without due process of law," and the Fourteenth Amendment uses the same phrase to describe the legal obligation of all states towards its citizenry. These words promise that all levels of government must operate within the law and provide fair procedures.

The 14th Amendment due process clause applies when the state acts against individuals. As a political subdivision, the Maricopa County Community College District (MCCCD) owes its students due process prior to depriving them of life, liberty, or property. This *Melissa Talks* will cover the due process we owe students when it comes to academic and conduct issues.

Students have a property right to their education because they have paid for classes and are making progress towards a degree. Once MCCCD has chosen to grant students a property right by admitting them to an institution of higher education, it cannot revoke this right arbitrarily or unfairly. Arguably students also have a liberty right at stake in disciplinary matters because adverse action taken can have serious consequences upon one's reputation and future as a student and into their career. The more serious the possible deprivation of liberty and property, the greater the due process that is owed.

As has been interpreted by the Supreme Court, Due Process means essentially a guarantee of basic fairness.

Basic fairness requires:

1. **Notice** (*notice of the rules to which students are held, notice of the consequences of violating those rules, and notice of the allegations being made against the student that may lead to a deprivation of their liberty and property*).
2. **An opportunity to be heard at a specific time and in a meaningful way** (*meeting or hearing where a student can present their “side of the story”*).
3. **A decision supported by evidence that meets the standard of proof and is not arbitrary or capricious** (*no action taken against the student before the decision is made, decisions made based on the “more likely than not” standard of proof, and information regarding an appeal right—including procedures for such an appeal are shared with the student*).

The three key takeaways for this session are:

1. Due process is not a single event that occurs in isolation and it is flexible—meaning the process due will depend on the context of the situation and to what extent a student’s property may be deprived.
2. Due process is both substantive and procedural. Procedural refers to whether the methods used to restrict a property or liberty interest were carried out fairly (generally includes notice and an opportunity to be heard) and substantive means the rules and the outcomes of not following the rules must be fair—and the outcome in the individual case must have a rational relationship to what was uncovered in the meeting.
3. Whenever a student is facing possible discipline based on an alleged violation of student conduct or academic policies, they are entitled to due process.

AUTO-WITHDRAWALS FROM PROGRAMS OF STUDY

Our first discussion will be around student academic issues, specifically auto-withdrawals from programs of study because of a student’s failure to comply with program requirements such as background checks or drug testing. Since this action is a pretty severe one—removing the student from the program or class—it requires the highest level of due process. This highest level would include written notice of the allegations being made against the student, a meeting where the student is able to present their side of the story, and a decision that is made based on the evidence, according to the standard of proof, and that is not arbitrary or capricious.

What this means is that the student cannot be auto-withdrawn immediately after failing to meet program requirements because that would mean we are depriving them of their liberty and property without due process (see basic fairness requirements above), which creates legal issues for the District.

A common misconception is that since students receive notice of the rules associated with program requirements, that is the only due process they need. This is not the case. These students must be afforded all of the steps of due process, even if they ultimately will be removed from a program or class. It is not enough to afford someone access to the instructional or non-instructional grievance process when a student has been removed from a class, program, or has had other action taken against them that is a deprivation of liberty and/or property because they can only access that policy AFTER the action has been taken. **Remember, due process comes before an action is taken to deprive a student of their liberty and property rights!**

Students can seek remedy through the instructional or non-instructional grievance process after they are provided due process.

ACADEMIC PENALTIES FOR CHEATING, DISRUPTION IN CLASS, OR OTHER CLASS-RELATED MATTERS

Failing a student because they have engaged in academic misconduct, removing a student from a class period due to classroom disruption, or addressing conduct issues that could lead to failing a class are smaller deprivations of a student’s property and liberty because the student is still able to engage in their educational journey. This means the level of due process owed the student is lower than what is listed in the previous section. As long as the student is notified of the expectations regarding academic integrity (usually in the syllabus) and when an allegation is made of academic misconduct, the student is informed

of the allegations—verbal notification is sufficient, but in writing is always preferable—afforded an opportunity to respond to the allegations, and a decision made based on MCCCCD policies related to academic misconduct, due process has been met. Again, due process occurs before an action is taken.

STUDENT CONDUCT ISSUES

Student conduct issues are a bit more involved because MCCCCD has an established process under the Student Conduct Code for addressing allegations of misconduct. This notwithstanding, affording our students due process is a vital part of the conduct process. In 1975, the Supreme Court of the United States held that public school students facing even a short suspension—10 days or less—are entitled to notice of the charges against them and the opportunity to present their side of the story. (*Goss v. Lopez*). Cases involving longer suspensions or expulsion, the Court held, may require yet “more formal procedures.” At a bare minimum, a MCCCCD cannot suspend or expel a student without giving that student notice and an opportunity to be heard.

Again, due process must be afforded before an action is taken against a student. The 2020 Title IX regulatory changes emphasize due process in the handling of sexual harassment/discrimination/dating, domestic violence and stalking.

WHAT DOES DUE PROCESS LOOK LIKE?

Phase ONE: Documentation of expectations

Notice of all qualifications AND disqualifications (positive drug test, negative background check, immunizations, and code of conduct discipline involving behavior/comportment, dishonesty, or acts of violence) should be listed on program websites, material, applications, and other student-facing, informational material. Students should know the conduct policies to which they are being held. Student conduct expectations should be placed in syllabi, policy, and other written documentation associated with attendance at MCCCCD.

For programs of study where withdrawal from the program is possible due to failure to meet certain qualifications, students should sign an acknowledgement of these qualifications. (See template below).

Phase TWO: When problems arise

The first thing to do is tie in the information from Phase ONE—outline the various ways in which the student has been NOTIFIED of the rules and expectations (including compiling all signed acknowledgement documents). Also, there should be notification of allegations being made against the student. The higher the deprivation of rights, the more involved this has to be—writing or verbal notification of the allegations.

Second, lay out due process (notice + meeting)

- Meeting **MUST** take place as soon after the event in question as possible (the student may attend class during this time unless there are dangers to other students). [Information regarding appeals RE: drug testing or background checks must be given to the student, if applicable]. A formal letter is written outlining the date, time, place for the holding of the due process meeting. (See template below).
- Student is allowed to present his/her/their side of the story/defense at the meeting.

Third, the student is entitled to a determination that is made based on the evidence, according to the standard of proof, and that is not arbitrary and capricious. For greater due process requirements, a formal letter should be written outlining the decision and any appeal right the student may have. (See template below).

TEMPLATES

Due Process Language for inclusion in all handbooks, policy/procedure documents, and website information

If a student has his/her/their continuation in a class or the academic program called into question based upon a positive drug test, a failed background check, or a code of conduct violation that may prevent the program's ability to place the student at a clinical site, the student will be afforded due process prior to being removed from the class/program.

Acknowledgement to add to handbooks, policy/procedure documents, and website information

_____ (initial) I have read and understand that issues such as a positive drug test, a failed background check, or a code of conduct violation may prohibit me from being placed in a clinical site, which places my continuation in a class or in my academic program in jeopardy.

_____ (initial) I understand that challenging a positive drug test or a failed background check is done through the vendor contracted to perform such test/check and not with Maricopa County Community College District or its associated colleges and my appeal must be made through the vendor's established process and at my expense.

_____ (initial) I understand that I will be afforded due process prior to being removed from a class or my academic program due to a positive drug test, a failed background check, or a code of conduct violation. I further understand my participation in this process is vital.

_____ (initial) I understand that if I am ultimately removed from a class or the academic program, my tuition will not be refunded. I also acknowledge that if I am removed from my clinical site and I cannot be placed in another site, I will be withdrawn from the program for failure to meet its requirements.

_____ (initial) I understand that I may be afforded conditional continuation in my class or academic program pending the outcome of the appeal with the vendor (for positive drug test or failed background check) and the results of my due process meeting with college administration. This continuation is conditional, pending the outcome of the appeal(s) and due process meeting.

LETTER TEMPLATES

Notice Letter/Meeting

Date
Student Name
Address

RE: Notice of Due Process Meeting

Student Name:

This letter is to notify you that you have [tested Positive for drugs as part of your mandatory drug test] [failed your background check—a requirement for participation in the clinical placement under your academic program. [engaged in conduct that has resulted in the determination that you have violated the Student Code of Conduct.] and are now at risk of being dropped from your [INSERT CLASS NAME] class and/or being removed from the [INSERT PROGRAM NAME] program.

The following serves as an outline of the myriad ways the Maricopa County Community College District (MCCCD) notified you of the requirements regarding [SELECT ALL THAT APPLY: drug testing, background checks, and compliance with MCCCD policies, including the Student Code of Conduct].

[ADD all places where the requirements are listed]

The next step in this process is to meet. We have set an appointment for you for the following date and time.

Date of Meeting: _____
Time of Meeting: _____
Location of Meeting: _____

At this meeting you will be allowed to present any documentation and make any arguments you feel best address the allegations listed above. Please ensure you provide any supporting documentation at the date/time listed above.

Since this process must take place quickly, you are expected to attend the meeting at the aforementioned date and time. If there are extenuating circumstances and you cannot make this meeting, please contact [INSERT NAME AND PHONE NUMBER] and we will attempt to reschedule the meeting. Note: The meeting must take place as soon as possible after notification of the triggering action listed above. If you fail to attend the meeting, a determination will be made without the benefit of your participation.

A determination regarding your status in the class/program will be made within a reasonable time after the holding of the aforementioned meeting. You will receive a written notification of the decision via email and regular mail, which will include information regarding appeal options.

Thank you for your cooperation.

Sincerely,

NAME
TITLE
COLLEGE

Date
Student Name
Address

RE: Determination Letter

Student Name:

This letter is to notify you of the determination regarding the outcome of the meeting held on [INSERT DATE].

After reviewing the evidence and weighing the information provided by both by you and by the college administration, we have come to a decision with regards to your ability to continue in the [INSERT CLASS NAME AND NUMBER] or [INSERT ACADEMIC PROGRAM NAME.]

Effective immediately, you are dismissed from the [INSERT CLASS NAME AND NUMBER] class for not meeting the requirements for successful completion. You may make a tuition appeal by following the instructions outlined here: [INSERT WEBPAGE]. As for your grade, you will receive a [INSERT GRADE INFORMATION] for this course.

If you have any questions, please feel free to contact me at [INSERT EMAIL] or [INSERT PHONE NUMBER].

Sincerely,
NAME
TITLE
COLLEGE

Date
Student Name
Address

RE: Determination Letter

Student Name:

This letter is to notify you of the determination regarding the outcome of the meeting held on [INSERT DATE].

After reviewing the evidence and weighing the information provided by both by you and by the college administration, we have come to a decision with regards to your ability to continue in the [INSERT CLASS NAME AND NUMBER] or [INSERT ACADEMIC PROGRAM NAME.]

Effective immediately, you are dismissed from the [INSERT ACADEMIC PROGRAM NAME] program. Your dismissal is due to the fact that based upon your situation, we will be unable to place you in a clinical rotation, as required under the terms of the certification/degree.

If you have any questions, please feel free to contact me at [INSERT EMAIL] or [INSERT PHONE NUMBER].

Sincerely,

NAME
TITLE
COLLEGE

Date
Student Name
Address

RE: Determination Letter

Student Name:

This letter is to notify you of the determination regarding the outcome of the meeting held on [INSERT DATE].

After reviewing the evidence and weighing the information provided by both by you and by the college administration, we have come to a decision with regards to your ability to continue in the [INSERT CLASS NAME AND NUMBER] or [INSERT ACADEMIC PROGRAM NAME.]

Effective immediately, you are conditionally allowed to remain in the [INSERT CLASS NAME AND NUMBER or ACADEMIC PROGRAM] until such time as your [DRUG TEST, BACKGROUND CHECK or STUDENT CONDUCT MATTER] has been resolved. It is your responsibility to provide [INSERT NAME OF PERSON] the necessary information regarding to your individual case as soon as it becomes available.

If you have any questions, please feel free to contact me at [INSERT EMAIL] or [INSERT PHONE NUMBER].

Sincerely,

NAME
TITLE
COLLEGE



Melissa Flores

MARICOPA COMMUNITY COLLEGES

Associate General Counsel, Senior | Office of the General Counsel

2411 West 14th Street, Tempe, AZ 85281

Melissa.Flores@domail.maricopa.edu

<https://www.maricopa.edu/>

O: [480-731-8418](tel:480-731-8418) | M: [801-557-1657](tel:801-557-1657)