

## FAIRNESS DOCUMENT

87-88 BSA 1 (formerly 79-80 BEC 9)

Approved by the Academic Senate 11/22/88; Approved by the President 12/06/88)

Revised (91-92 BEC 11)

Approved by the Academic Senate 10/31/92; Approved by the President 11/10/93.

Revised (99-00 BEC 12)

Approved by the Academic Senate 1/25/00; Approved by the President 1/31/00.

Revised (03-04 BEC-3)

Approved by the Academic Senate 10/7/03

Revised (03-04 BEC 7)

Approved by the Academic Senate 12/2/03

Revised (05-06 BEC 8)

Approved by the Academic Senate on 05/30/06

### I. Purpose

It is the purpose of these procedures to provide a final mechanism for the resolution of student complaints concerning academic unfairness. These procedures are for the purpose of resolving serious cases of unfairness those which extend beyond academic judgment and honest differences of opinion, and those for which the normal channels have proved ineffective. Every effort should be made by all parties to resolve the issue before the student submits a formal complaint to the Fairness Committee.

It is the policy of California State University, East Bay to comply with Title VI of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

### II. The Fairness Committee

Responsibility for implementation of these procedures rests with the Fairness Committee.

#### 1. Composition of the Fairness Committee

- a. The Committee is composed of five tenured faculty members elected from the Schools to serve two-year terms, two students serving one-year terms, and a Presidential Appointee to serve at the pleasure of the University President.
- b. The faculty members of the Committee will be elected by the Schools in the Spring Quarter in the following manner: Each School will have at least one representative, with the representatives from Letters, Arts and Social Sciences and Science elected in even numbered years and the representatives from Business and Economics and Education elected in odd numbered years. The fifth member will be elected from the School with the largest number of regular faculty, but not in the same year as his/her colleague from the same School.
- c. Student members of the Fairness Committee must have completed at least one quarter at CSUEB with a minimum of 8 units of academic credit with a GPA of 2.0 or better at CSUEB. Student members must also be enrolled for a minimum of seven (7) units of academic credit during any term while serving on the Fairness Committee. Student members of the Fairness Committee must be in good standing at CSUEB. Student members will be selected by the Associated Students in a manner of their own choosing.
- d. When a vacancy occurs on the committee it shall be filled for the period of absence in the following ways:

1. A Presidential appointee: The Executive Committee shall request the president to appoint a replacement;
  2. A faculty member: For an absence of more than one quarter, the Executive Committee shall request the School or Division Faculty to provide a replacement. For an absence of one quarter or less, the Executive Committee shall appoint a replacement member from the appropriate School or Division; and
  3. A student member: The Executive Committee shall request the President of the Associated Students to provide for the selection of a qualified student replacement by a method to be determined by the Associated Student Body President and Council.
- e. At its first meeting of the Academic Year, the Committee will elect one of its faculty members to be Chair.
  - f. The Presidential Appointee is an ex officio, nonvoting member of the Fairness Committee. He/she will serve as the Committee Secretary, will preserve the minutes of the Committee, and will assume custody of all final reports of Hearing Panels. (See Section IV.2.n.)

## 2. Functions of the Fairness Committee

- a. To implement these procedures. The Committee may, from time to time as it sees fit, refer questions of interpretation to the Student Affairs Liaison Officer (SALO).
- b. To make an initial evaluation of each-case. (See Section 111.2.)
- c. To create Hearing Panels to adjudicate allegations of unfair treatment in any CSUEB educational program or activity.
- d. To hear charges that a Hearing Panel followed improper procedures. It is not within the authority of the Fairness Committee to review the decision(s) of a Hearing Panel that has followed the appropriate procedures. (See Section IV.) If, however, the Fairness Committee finds that improper procedures were followed, it may set aside the finding(s) of the Panel and establish a new Panel to adjudicate the original allegations. (See Section IV.2.o.)
- e. To periodically review the Fairness procedures and make appropriate recommendations to the Student Affairs Liaison Officer (SALO).
- f. To present a yearly statistical report to the Academic Senate concerning the general nature and disposition of student complaints received by the Committee. The report will contain no language by which individuals or departments can be identified.

## III. The Academic Grievance Procedures

1. Initiation of an Academic Grievance Procedure
  - a. The student should begin by consulting informally with the Presidential Appointee. The Presidential Appointee will assist the student to understand the procedures and the normal channels to be explored in advance of formally initiating a grievance. The Presidential Appointee may assist the grievant in completing the appropriate complaint form, but will not serve as an advocate for the grievant.

- b. A grievance is initiated by filing a completed complaint form with the Presidential Appointee.
- c. Upon acceptance, the Presidential Appointee will sign and date the complaint form. He/she may then spend up to five academic days seeking to resolve the grievance to the mutual satisfaction of the student and the parties named in the complaint. If these efforts are unsuccessful, or if five academic days lapse from the date of the filing, the Presidential Appointee will forward copies of the complaint form to the grievant, to each member of the campus community named on the form, to any other person(s) the Presidential Appointee believes would be interested in responding to the allegations, and to the University President or designee.
- d. Any person to whom a copy of the complaint form has been sent may return a written response to the Presidential Appointee within five academic days from the date the complaint was forwarded. At the end of this five day period, the Presidential Appointee shall submit the complaint, and any responses which may have been received, to the Chair of the Fairness Committee for consideration at the next meeting of the Committee. Late responses will be forwarded when practical. However, the findings of the Fairness Committee and its Hearing Panels shall not be impeded by the failure of a member of the faculty to respond to a student complaint.

## 2. Consideration of the Academic Grievance

- a. The Chair of the Committee will normally circulate each Complaint among the members of the Fairness Committee in advance of its next meeting.
- b. The Committee will determine whether there is enough substance to the complaint to justify a hearing. If four voting members of the Committee agree that the complaint is without substance or merit, the Committee may return the form to the student for more evidence, or it may deny the grievance and terminate the proceedings.
- c. Examples of deficiencies which may cause the Committee to return the complaint form or to terminate the grievance include:
  - (1) The grievant is unclear in the statement of the complaint or the remedy sought.
  - (2) The complaint does not contain allegations that appear to be serious, or it addresses issues outside the purview of the Fairness Committee.
  - (3) The complaint does not involve a violation which, if it exists, results in a personal wrong to the grievant.
  - (4) The complaint is based on an action which, itself, is mandated by regulations such as State Law or procedures of the California State University system.
- d. Upon acceptance of a complaint, the Committee will assign the grievance to a Hearing Panel. It is expected that the Hearing Panel will be convened and will hold its first meeting within ten academic days of the acceptance of the complaint by the Committee.

3. A Grievance Involving Discrimination

If the grievant has alleged a prima facie case of discrimination, the complaint will be referred to the Director of Employment Relations and Practices (DERP).

- a. CSUEB follows federal and state laws and our own internal policies when students, staff, or faculty feel they have been discriminated against on the basis of race, ethnicity, color, gender, sex, national origin, ancestry, disability, medical condition, age, religion, and/or sexual orientation. These complaints must follow reporting procedures and be resolved within prescribed timelines.
- b. If a student believes she or he has been discriminated against by a faculty member, the student should speak with the relevant department chair (or college dean) and either the Director of Employment Relations and Practices (DERP), the Presidential Appointee for Fairness Committee, or the Executive Director for Student Judicial Services.
- c. Once the student signs the complaint form, the timeline begins. For a complete description of this process (Discrimination /Retaliation Grievance Procedures), see the Office of Student Judicial Affairs or the Diversity Officer in the Human Resources Office.
- d. After the discrimination complaint is resolved, the Fairness Committee will meet with the DERP and the Executive Director for Student Judicial Services to discuss any potential grade-related aspects of the case to decide if a hearing panel is warranted. If four voting members of the Committee agree that the complaint is without substance or merit, the Committee may return the form to the student for more evidence, or it may deny the grievance and terminate the proceedings. The Fairness Committee will let the student know its decision, in writing within 10 academic days of its meeting. [See *University Discrimination/Retaliation Grievance Procedures*. document for more information]

4. Academic Hearing Panel

If the complaint is not returned or the grievance terminated, the Fairness Committee will select a Hearing Panel to consider the charges filed by the grievant. It will be referred to an Academic Hearing Panel. The Hearing Panel will render its decision(s) within twenty academic days of the date of its first meeting.

- a. If an Academic Hearing Panel is constituted to adjudicate the allegations, it will be comprised of two faculty members and one student. The grievant may waive the right to a student member and accept instead a third faculty member only if there is no student available to serve, or if the lone student available to serve has been challenged in accordance with Article IV, Section 2.b.
- b. A grievant is entitled to one peremptory challenge of any member of an academic hearing panel -- faculty or student. If the grievant wishes to challenge the student member and there is no other student available to serve, then the grievant may waive the right to a student member on the hearing panel and accept instead a third faculty person.
- c. The faculty members of the panel will be selected at random from the tenured faculty of the University who are teaching half-time or more, except that not more than one faculty panelist may come from the School in which the alleged irregularities occurred. Any faculty member chosen for membership on an Academic Hearing Panel is expected to

serve. In extreme situations, a panelist may be excused by the Chair of the Fairness Committee.

- d. The student member of the Hearing Panel must be a Junior or above, have completed at least one quarter at CSUEB with a minimum of eight units of academic credit, have a GPA of 2.0 or better at CSUEB, and be enrolled for seven or more units of academic credit during the quarter of service on the Hearing Panel. Student members of the Hearing Panel must be in good standing at CSUEB. The Presidential Appointee shall maintain a list of prospective student panelists who have been approved by the SALO after consultation with the Associated Students Council. The Fairness Committee will assign student panelists from this list.
- e. The Fairness Committee Chair will convene the Hearing Panel and explain the procedures. The Hearing Panel will choose one of its members as Chair and another as Secretary. The Panel has twenty academic days to conclude its business. It will begin by considering the written complaint submitted by the student, and any written response(s) from other parties. The Hearing Panel may gather any additional information it deems necessary for its deliberations. The Secretary of the Panel will keep minutes of all Hearing Panel proceedings. These minutes and other records of the Panel shall be available to the student, the instructor, and the Fairness Committee.
- f. As soon as it reasonably can, the Hearing Panel shall set a date and time for a hearing, and so inform the Fairness Committee Chair.
- g. The Fairness Committee Chair will notify the parties involved of the time and place of the hearing. He/she will notify the instructor involved of his/her right to submit a written statement or to appear in person at the hearing.
- h. The Panel will conduct a hearing to consider the charges, determine the facts of the case, and, where appropriate, institute remedies.
  - (1) The Panel shall not find for the student if it concludes that the actions which gave rise to the complaint resulted from the exercise of reasonable judgment.
  - (2) There is a presumption that any grade assigned by the instructor is correct; the burden of proof to change an assigned grade rests with the student.
- i. If the Hearing Panel determines that a grade should be changed, the Panel shall utilize the expertise of other faculty from the department involved (or closely related departments) when assigning a new grade.
- j. A student member of a Fairness Committee Hearing Panel may not participate in the assignment of grades.
- k. No grade may be lowered by any action of the Fairness Committee. If a Hearing Panel determines that a grade should be raised, the new grade will be submitted by the Chair of the Fairness Committee.
- l. The decision of a properly constituted Hearing Panel that has followed correct procedures is final.

- m. The Hearing Panel will report its determinations and judgments to the Fairness Committee in writing within twenty academic days of its convening. The final report must be signed by all three members of the Panel. A minority view may be expressed when appropriate.
- n. The Fairness Committee Chair will report the results to the student, instructor, and Department Chair. Upon request, copies of the Panel's report will be made available to the student, instructor, and/or Department Chair.
- o. None of the contents of the minutes or other records of the Hearing Panel may ever be included in a faculty personnel file or student folder. They shall all be forwarded to the Presidential Appointee who shall destroy them six months after the final resolution of the grievance.
- p. If the student or the instructor (or the Department Chair in the instructor's absence) believes the Hearing Panel followed improper procedures, he/she may appeal to the Fairness Committee within five academic days of receipt of the Hearing Panel decision. The Fairness Committee may not review the decision(s) of a Hearing Panel that has followed proper procedures. If, however, the Fairness Committee finds that improper procedures could have influenced the decision(s) of the Hearing Panel, it may establish a new Hearing Panel to make a final decision.

#### IV. Deadlines and Schedules of Hearings

- 1. Except in unusual circumstances, no grievance may be initiated after the close of the quarter following the quarter in which the alleged irregularity occurred. However, Spring Quarter grievances may be submitted the following Fall Quarter.
- 2. Summary of time schedules
  - a. Faculty members of the Fairness Committee are elected in the Spring Quarter for the following year.
  - b. Upon acceptance of the completed complaint form, the Presidential Appointee may spend a maximum of five days attempting to resolve the grievance informally.
  - c. Any person to whom a copy of the complaint form was sent by the Presidential Appointee has five academic days from the date the complaint was forwarded to respond.
  - d. It is expected that the first meeting of a Hearing Panel will be held within ten academic days of Fairness Committee acceptance of the complaint.
  - e. It is expected that a Hearing Panel will render its decision(s) within twenty academic days of the date of its first meeting.
  - f. In the case of an Academic Hearing Panel:

(1) Allegations of improper procedures must be referred to the Fairness Committee within five academic days of receipt of the Hearing Panel decision.

- g. At the beginning of each quarter the Presidential Appointee to the Fairness Committee shall send a letter to the President of Associated Students reminding him/her to search actively for students to serve on hearing panels. If at any time the list of students available to serve on hearing panels is reduced to three or fewer, the Presidential Appointee to the Fairness Committee shall send a letter to the President of Associated Students requesting that additional students who are willing to serve be found.
3. The foregoing deadlines notwithstanding, the overriding purpose of this document is to insure fairness. The deadlines herein described may be extended if two thirds of the voting members of the Fairness Committee determine that an extension is required to insure fairness and not mere convenience.