



Northern
California

June 13, 2024

VIA EMAIL ONLY

Jessica Rashid
Assistant Dean of Students, Student Conduct & Community Standards
245 Hahn Student Services Building
1156 High Street
Santa Cruz, CA 95064
jnrashid@ucsc.edu

Re: Due Process Concerns With Protest-Related Student Discipline

Dear Ms. Rashid:

I write on behalf of the American Civil Liberties Union of Northern California (“ACLU NorCal”) to remind the University of California Santa Cruz (“UCSC”) about its constitutional obligations to students during disciplinary proceedings. ACLU NorCal is concerned that certain procedural due process requirements are not being met as the school attempts to discipline students in connection with recent campus protests. UCSC must evaluate its current approach to ensure compliance with constitutional safeguards. (*Goss v. Lopez* (1975) 419 U.S. 565, 574 [“The authority possessed by the State to prescribe and enforce standards of conduct in its schools, although concededly very broad, must be exercised consistently with constitutional safeguards.”]; *see also Goldberg v. Regents of University of California* (1967) 248 Cal.App.2d 867 [“the University’s rule-making powers and its relationship with its students are subject to federal constitutional guarantees”].)

It is ACLU NorCal’s understanding that UCSC Police recently issued trespass notices under Penal Code section 626.4 to a large number of UCSC students allegedly involved in protest activity at or near campus. These students then received an email from UCSC’s Office of Student Conduct & Conflict Education (the “Office”) on June 4, 2024 advising that their “behavior may represent violation(s) of the Code of Student Conduct as published in the *Student Policies and Regulations Handbook*.” The email invited students to “respond” by signing up for a “626.4 Hearing & Incident Review Meeting.” On June 5th—presumably after a number of students had requested clarification as to what a “626.4 Hearing & Incident Review Meeting” entailed—the Office sent a follow up email stating that it would be holding a Penal Code section 626.4 hearing “to review the withdrawal of consent” to enter or remain on campus and also an Incident Review

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Meeting to consider student conduct charges “concurrently for students who wish[ed] to participate in both.” The email asserted that, with respect to the conduct charges, students “who fail[ed] to participate” in the Incident Review Meeting would “waive their right to a formal hearing.” Neither the June 4th nor the June 5th communication contained specific allegations against the students or notified the students of the particular charges against them.

I. UCSC is subject to constitutional safeguards requiring two levels of due process when student discipline is imposed.

As a public institution, UCSC must abide by the Due Process Clause of the Fourteenth Amendment, which provides that no state shall “deprive any person of life, liberty, or property, without due process of law.” (U.S. Const. amend. XIV, § 1.) Three factors must be considered in determining what process is due: “First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” (*Mathews v. Eldridge* (1976) 424 U.S. 319, 335.) The “primary characteristic” of due process is “fairness.” (*Doe v. Regents of University of California* (2018) 28 Cal.App.5th 44, 46.)

The law demands that public universities like UCSC provide two levels of due process in student disciplinary proceedings where a dispute over facts or the credibility of witnesses arises. First-level due process applies once a student is accused of misconduct. It requires the school to tell the student “what the accusation is and how [the student] is alleged to have violated school rules (notice) and give[] [the student] the opportunity to explain or contest the accusation.” (*Knight v. South Orange Community College District* (2021) 60 Cal.App.5th 854, 870 (hereafter *Knight*.) The school then has a duty to investigate the disputed incident, including investigation of the student’s “version of events.” (*Ibid.*) Once the investigation is completed, the school must advise the student if “it is considering suspension (or expulsion).” (*Ibid.*)

Second-level due process is triggered if the student decides to object to being suspended or expelled. (*See ibid.*) This process—which “becomes mandatory only before the penalty or suspension can be imposed upon an objecting student”—must entail “a hearing, live testimony, and the full panoply of trial-like procedure.” (*Ibid.*) Second-level due process is no “mere privilege.” (*Braxton v. Municipal Court* (1973) 10 Cal.3d 138, 154, fn.16 (hereafter *Braxton*.) Dating back to at least the 1960s, courts have “held that procedural due process requires appropriate notice and hearing before the right to attend a state university or college is withdrawn.” (*Ibid.*)

II. UCSC's current procedures raise questions as to whether it is complying with constitutional due process requirements.

Applying the foregoing principles to UCSC's procedures, the Incident Review Meeting offered to students appears to meet the requirements of first-level due process. The UCSC Student Handbook specifically explains that, at such a meeting, "[s]tudents . . . have the opportunity to learn more about their student rights, the student conduct process, and discuss the alleged incident in detail."¹

It is unclear, however, that UCSC is prepared to meet the requirements of second-level due process. The email from the Office describes second-level due process as a "formal hearing." Although it acknowledges that students facing suspension or expulsion "are entitled to a formal hearing," the June 5th email asserts that "[s]tudents who fail to participate in an Incident Review Meeting waive their right to a formal hearing." This statement appears to threaten students' due process rights and misstates the law.

UCSC may not impose suspensions or expulsions without affording students an opportunity to contest or appeal sanctions through second-level due process. The law contains no requirement that a student participate in first-level due process in order to be afforded second-level due process. Again, the process becomes "**mandatory . . . only before the penalty of suspension can be imposed** upon an objecting student." (*Knight, supra*, 60 Cal.App.5th at p. 870 [emphasis added]; *see also Braxton, supra*, 10 Cal.3d at p.138, fn.16.)

While the UCSC Student Handbook provides that "[s]tudents wishing to appeal findings or student conduct outcomes related to a student conduct case can access the electronic appeals process,"² neither the June 4th nor June 5th emails mention whether this process is available to students who do not participate in an Incident Review Meeting. It is further unclear whether students may electronically appeal, given that, per the Handbook, students "are limited to one level of review (electronic appeal (see Section 107.30(b)) or in certain instances a formal hearing (see Section 108.00),"³ and the email mentions only a formal hearing.

¹ UCSC's Dean of Students Office, Student Handbook and University Policies' Glossary of Inclusive Language <<https://deanofstudents.ucsc.edu/student-conduct/student-handbook/>> (as of June 10, 2024).

² UCSC's Dean of Students Office, Student Handbook and University Policies' Section 107.50 <<https://deanofstudents.ucsc.edu/student-conduct/student-handbook/100.004.pdf>> (as of June 10, 2024).

³ *Ibid.*

UCSC must ensure that its students have an opportunity to explain or contest the allegations against them *and* an opportunity to participate in a formal hearing to object to serious disciplinary sanctions. These distinct opportunities satisfy the two levels of due process applicable to student disciplinary proceedings; they should not—and indeed cannot—be collapsed.

The stakes are quite high here. Many of the students swept up in recent events are facing school suspension or expulsion as well as criminal charges. Given the seriousness of these punishments and the devastating impact they can have on a young person's future, UCSC's process for imposing discipline must be clear, and the punishments meted out (if any) should be proportionate and fair. Based on the facts known to ACLU NorCal, it appears that UCSC's current process for disciplining student protestors is, at best, confusing and, at worst, constitutionally infirm. UCSC must reevaluate these disciplinary procedures to ensure they comport with procedural due process requirements and update any procedures found to be lacking. By doing so, UCSC can signal its commitment to fair adjudication of student disciplinary matters and to protecting its students' constitutional rights.

Sincerely,



Shaila Nathu
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CC: Garrett Naiman, Associate Vice Chancellor & Dean of Students (deanofstudents@ucsc.edu)
Eréndira Rubin, Chief Campus Counsel (ererubin@ucsc.edu)