

**Policy****3-8020 Due Process**

Due Process rights are basic human rights and are enumerated in the Fifth and Fourteenth Amendments of the United States Constitution. By establishing fair and equitable dispute resolution policies, it is the intent of the Governing Board of the Yosemite Community College District to respond to allegations of misconduct with a balance that protects the accuser while affording the safeguards of due process for the accused.

YCCD policy prohibits retaliation against an individual who in good faith reports or provides information about concerns or suspected violations of law or District policy. However, false accusations determined to have been made with the intent of harming or harassing another person may subject the accuser to disciplinary action. An accusation that is not made in good faith is not protected.

The Governing Board desires to maintain an environment of fair treatment for all members of the District community, including faculty, staff, students, volunteers, trustees, contract employees, and others in the YCCD community. The Governing Board recognizes that state and federal laws and regulations establish constitutional due process standards and that California state law supports the rights of workers in California to negotiate the due process procedures applicable to their workplace through the collective bargaining process. Consequently, nothing included in this policy will supersede or nullify the language of existing collective bargaining agreements or contracts, existing policies governing due process (including those related to student conduct), or federal or state laws, regulations, case law, or precedential regulatory decisions. However, as of the time of adoption of this policy, it is the intention of the Board that existing due process policies will be reviewed and revised to be brought into alignment and consistent with this policy, provided that such revised policies are consistent with the law.

The Governing Board believes that adopting Policy 3-8020 will promote fairness and equality for all members of our institution—employees (whether full or part-time), students, volunteers, docents, trustees, etc. - and will support the Governing Board's efforts to maintain high morale throughout our two-college District. However, nothing in this policy provides any additional property rights than already provided in the California Education Code or any other state or federal law.

The Chancellor is directed to ensure that the following minimum standards for due process will be applied for all members of the District community and that Administrative Procedures are drafted if necessary to further implement this policy:

1. If a complaint is received by the District, the District may close the matter without further action after the District conducts a thorough preliminary investigation.
2. If the District determines that further investigation beyond the preliminary stage is warranted, the District shall inform the individual against whom allegations have been made (referred to as

1 the Responding Party or “RP”), in writing, of the nature and scope of all charges brought against  
2 the RP, at least ten business days before an initial meeting with an administrator or investigator.  
3 At minimum, unless legally prohibited, a copy of Board Policy 3-8020 and a written detailed  
4 summary of the allegations will be provided, including reference to time(s), date(s) and  
5 location(s), individuals involved, specific conduct alleged, and policies alleged to have been  
6 violated. The written complaint shall be provided unless otherwise prohibited by law or if such  
7 disclosure would compromise the integrity of the investigation, or the safety of a complainant or  
8 witness.

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- 10 3. The District reserves the right to place the RP on leave, reassign the RP to another position or  
11 work area, and/or to take any additional supportive measures the District deems necessary, while  
12 it carries out an investigation.
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- 14 4. The RP shall be informed that she or he has the right to a presumption of innocence and that the  
15 burden of proof lies with the District.
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- 17 5. The RP will have the right to have a representative of the RP’s choice present at interviews or  
18 hearings at RP’s sole expense. In addition, a CBA member has a right to a union representative.  
19 Representatives are permitted to be active participants (but not obstruct) any hearings, meetings,  
20 or interviews. Recording of any interviews during the investigation will only be made by mutual  
21 consent of RP and the investigator. All proceedings should be conducted in a respectful and  
22 dignified manner.
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- 24 6. Prior to the District taking any final disciplinary action against the RP, the District shall provide to  
25 the RP any relevant documents, including any final investigative report and notice of the right to  
26 respond to the charges, either orally, in writing, or both, prior to the disciplinary action. Such  
27 notice will be provided at least ten (10) working days prior to any disciplinary action or hearing.
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- 29 7. RP shall notify the applicable administrator within five (5) working days if RP requests an informal  
30 hearing. To the extent permitted by law, the RP will be provided with a copy of the report,  
31 including when there is no finding of misconduct, and even if the formal accusation was dropped.  
32 Retaliation or threats made by RP (or the RP’s allies) against accusers is itself grounds for  
33 discipline.
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- 35 8. If RP requests a hearing, the Human Resources Administrator or other appropriate administrator  
36 will serve as the hearing officer. The hearing officer shall not be the same person who investigated  
37 the matter. The RP is entitled to an impartial, unbiased panel or trier of fact. Any hearing officer  
38 must render an impartial review and decision of the issue in dispute. The RP has the right to  
39 challenge a fact-finder(s) for bias if the RP contends that the fact-finder cannot be a fair or  
40 impartial decision-maker. Any challenge submitted by the RP to the fact-finder shall be  
41 submitted, as applicable to the person and situation, to the College President, Human Resources  
42 Administrator, District Chancellor, or District Board of Trustees (“decision-maker”). The decision-  
43 maker’s determination shall be final.
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- 45 9. During the hearing, the RP will have the right to present RP’s side of the issues, refute the  
46 evidence, and produce any oral or written documentary evidence, in real time. The RP’s  
47 representative also has the right to question witnesses, including the accuser, and respond to  
48 another party’s version of events. Witnesses may participate in the hearing from an off-site  
49 location through the use of videoconferencing or similar means.

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2 10. An RP has a right to a decision based on the “clear and convincing’ standard of evidence.  
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4 11. The hearing officer will present his or her written findings to the RP within ten (10) working days.  
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6 12. Any finding of misconduct may be appealed according to existing procedures.  
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8 **Cross References (see also):**

9 YCCD Policy 3430 – Prohibition of Harassment

10 YCCD Policy 3433 – Prohibition of Sexual Harassment under Title IX

11 YCCD Policy 3434 – Responding to Harassment Based on Sex under Title IX

12 YCCD Policy 3435 – Discrimination and Harassment Complaints and Investigations

13 YCCD Policy 3540 – Sexual and Other Assaults on Campus

14 YCCD Policy 5500 – Standards of Student Conduct

15 YCCD Policy 5530 – Compliant Policy

16 YCCD Policy 7700 – Whistleblower Protection  
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18 **References:**  
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21 **Adopted:** April 8, 2020

22 **Revision Adopted:** February 10, 2021

23 **Last Reviewed:** ~~April 8, 2020~~, February 10, 2021