F.3.1.3 (Procedure) Student Health - Threat to Health and Safety
Responsible Department: Vice Chancellor for Student Success
Based on Board Policy: F.3.1 - Student Health
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Following is the process for assessing and addressing threats to safety and health involving students with conditions prompting behavioral or other safety and health concerns that do not appear to be appropriate for application of the Student Code of Conduct.

Applicability

This Procedure is to be followed where a student reasonably appears to present a direct threat to the health and safety of that particular student or to others (including potential injury to human life) or where unintentional disruption of the orderly operation of the campus or facility reasonably presents a concern that a condition may exist that may require assessment and appropriate action. This Procedure applies to involuntary and unintentional physical threats (such as, for example, seizures - see "Direct Threat to Health and Safety").
This Procedure applies to all students without regard to whether the student is a person with a disability. The College District does not discriminate on the basis of disability against any student. This Procedure contemplates use of the same assessment process regardless of whether the condition constitutes a disability. The assessment process is intended to be in accordance with the Americans with Disabilities Act, the Rehabilitation Act, state law, and regulations issued pursuant to and case law interpreting those authorities.

I. Direct Threat to Health and Safety

Exigent Circumstances Involving Maintaining Health and Safety

If the student appears in need of immediate medical care and cannot communicate, get assistance immediately, call 911 and clear the area of persons and physical objects.

In circumstances involving what reasonably appears to be imminent significant threats to the safety and health of that particular student or to others (including potential injury to human life) the student may, preferably outside the presence of others and not in the classroom or lab setting, be asked to leave the College for the remainder of the day, if other reasonable actions cannot eliminate or reduce the threats to an acceptable, reasonable level. If necessary, assistance in removing the student may be sought from Alamo Colleges Police Department (ACPD). If the student is removed from the classroom or lab, the Department Chair and the Chief Student Affairs Officer must be notified.

A student who is asked to leave the class or lab setting more than once within 5 consecutive class/lab hours shall be given an opportunity to appear before the President or a designee within five (5) class days from the latest incident. A meeting with the President or designee should be for the purpose of initial assessment and for communicating expectations, such as direct threat assessment. The President or designee may, as a result of the meeting with the student, cause the Chief Student Affairs Officer to expedite the direct threat assessment process in an effort to assist the student in successfully completing the class/lab work.

Direct Threat Assessment Process

Students reasonably appearing to present a direct threat to the health and safety of that particular student or to others (including potential injury to human life) shall be referred to the Chief Student Affairs Officer. The Chief Student Affairs Officer shall (in consultation with the College Student Disability Services Officer, as appropriate) be responsible for performing the assessments and determining whether a direct threat exists supporting reasonable accommodations or exclusion of the student. When the Chief Student Affairs Officer receives information that a student may constitute a direct threat, the Chief Student Affairs Officer or a designee shall, in coordination with the Office of Student Disability Services (if appropriate) contact the student for a conference for further evaluation of the situation.
The Chief Student Affairs Officer or a designee should create a positive dialogue with the student whenever possible with the goal of addressing the situation in a mutually beneficial manner, by:

1. Explaining the role of the Chief Student Affairs Officer;
2. Explaining the importance of health and safety of the student and others;
3. Discussing the incident(s) giving rise to the concern; and
4. Giving the student the opportunity to explain the incident(s), including reasons for the occurrence(s).
5. Informing student of available support services and resources.

Under circumstances where the student is being considered for reasonable accommodations or exclusion from a classroom, lab setting or program, an individualized assessment of the individual's present ability to safely continue in the classroom, lab setting or program (as applicable) shall be performed. This assessment shall be based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence.

NOTE: This assessment must take place within the context of the participation which may be affected by the potential direct threat. For example, if the student is to be excluded from a particular *program*, that student must be shown to pose a direct threat to the health or safety of the student or others in the context of the entire program. It is not sufficient to establish that the student may not *succeed* in a program - there must be a direct threat. Certain lab settings have inherently greater risks and therefore participation may pose specific risks to some individuals; therefore, a student may be excluded from a lab setting under appropriate circumstance due to the existence of a direct threat which cannot be reasonably accommodated, but may not necessarily be excluded from the program (even though the student may not be able to successfully complete the program without lab participation).

A qualified physician should be consulted to assist in performing this assessment. A sample letter is attached to this procedure. However, the physician will not actually conduct the

assessment but instead provide medical information and documentation. The assessment is the responsibility of the Chief Student Affairs Officer based on the information provided by the student, the physician and/or the best available objective evidence. Consult the Office of Legal Services for assistance.

In performing the direct threat assessment, the following should be established:

1. Identify the risk (the risk must not be based on speculation or remote probability and must not be based on generalized fears);

2. Identify who is at risk (the student or others);

3. Establish the duration and frequency of the risk (for example, are there seizures lasting 2 minutes, occurring every other week?);

4. Establish the nature and severity of the potential harm in light of the circumstances; and

5. Establish the likelihood that the potential harm will occur (for example, if it is controlled with medication, is a risk-incident likely to occur at all?).

6. Assess whether accommodations exist:

    a. What modification would be necessary to avoid removing the student (such as the availability of auxiliary aids through Disability Support Services)?

    b. Is the modification reasonable (i.e., would the modification fundamentally alter the nature of the service, program or activity [ED/OCR guidance] or create an undue hardship)?

    c. If a modification is reasonable, what is the plan and timeline for implementation?

Administrative Disposition - Exclusion from Classroom, Lab or Program

After completing the direct threat assessment, the Chief Student Affairs Officer or a designee shall do one of the following:

1. Find there is no direct threat and reinstate the student immediately (if [s]he has been temporarily removed from the classroom or lab);

2. Require reasonable accommodations and reinstate the student; or.

3. Render a decision that exclusion from a classroom or lab setting or program is appropriate based on the assessment findings (if [s]he has been temporarily removed from the classroom or lab).

In rendering a decision, the Chief Student Affairs Officer or designee will:

1. Provide to the student a notice of the decision that includes a summary of the findings and notification of the student's right to appeal; and

2. Attempt to obtain a signed or e-mailed acknowledgment from the student that the student understands the findings and the right to appeal. If the student refuses to sign or e-mail such an acknowledgment, the record shall reflect the fact that the student was informed but refused to acknowledge understanding. The use of Alamo Colleges e-mail shall be permitted for this purpose but the student should be asked to reply acknowledging receipt or a read receipt should be requested and received if technologically feasible.

Right to Appeal Administrative Disposition - Direct Threat Hearing Committee

When a student wishes to appeal the administrative disposition of a decision to exclude the student based on the assessments, he/she is entitled to a hearing before a Direct Threat Hearing Committee. The student must make the request to the Chief Student Affairs Officer in writing on or before the fifth (5th) class day following the administrative disposition. The Direct Threat Hearing Committee may be comprised of and chaired by the same members serving as the Student Code of Conduct Hearing Committee.

The Chief Student Affairs Officer or a designee shall represent the College before the Direct Threat Hearing Committee and present evidence to support the allegations of significant threat. The Chief Student Affairs Officer or a designee may be assisted by legal counsel assigned by the District General Counsel when, in the opinion of the Chief Student Affairs Officer or a designee, the best interests of the student or the College would be served by such assistance.

A. <u>Notice</u>

The Direct Threat Hearing Committee Chair shall notify the student concerned by letter of the date, time, and place for the hearing, which should if practicable take place within ten class days after the date of the appeal request but in no event more than thirty class days after the date of the appeal request. As deemed necessary, the hearing date may be rescheduled by the Chief Student

Affairs Officer or designee or otherwise by mutual agreement of the Chief Student Affairs Officer or designee and the student.

This notice shall:

1. contain sufficient detail to apprise the student of the results of the assessments to enable the student to prepare a response;

2. direct the student to appear on the date, time, and place specified; and

3. advise the student of the following:
   a. The student may request and have a confidential hearing;
   b. The student may appear in person and with parents or legal guardian, and or a representative or legal counsel at the hearing. If the student will be accompanied by a representative or legal counsel, the student must inform the Code of Conduct Administrator at least 48 hours prior to the hearing;
   c. The student will be informed of the identity of each witness who will testify for the College District (unless the witness is called to rebut testimony of the student or the student's witness(es);
   d. The student may call witnesses and ask for copies of evidence in the College District's possession in advance of the hearing and offer evidence and argue in his or her behalf at the hearing;
   e. The student may have the hearing recorded verbatim and have a stenographic digest made of the recording or a transcript of the hearing, at the student's expense;
   f. The student may cross-examine each witness who testifies against the student; and
   g. The student may petition the President of the College if the student is not satisfied with the decision (see Administrative Review).

B. Failure to Appear

The Chief Student Affairs Officer or designee may, on behalf of the District and at his/her discretion, proceed with the hearing in the student's absence, if the student was duly notified.

C. Hearing Procedure

Generally, Committee members may, if necessary, question witnesses, but they are encouraged to allow the participants to conduct the examinations. A student cannot be compelled to testify against him or herself.

The Direct Threat Hearing Committee shall proceed generally as follows during the hearing:

1. the student is greeted;
2. the Committee Chair will briefly state the purpose for the hearing;
3. the Chief Student Affairs Officer or designee will describe the results of the threat assessment and present the College's case;
4. the student will present his or her response;
5. the Chief Student Affairs Officer and the student may present rebuttal evidence and argument;
6. all evidence shall be offered to the Direct Threat Hearing Committee and made part of the record;
7. the Direct Threat Hearing Committee shall deliberate in private and shall make its decision strictly upon the evidence presented at the hearing;
8. if the Direct Threat Hearing Committee is unable to reach a decision at that time, it shall announce a date and time for the decision to be rendered.
9. if the Direct Threat Hearing Committee finds the student poses a significant threat to the safety or health of the student or others, which cannot be reasonably accommodated by the College District, the Committee shall uphold the exclusion of the student from the classroom, lab setting or program; if the finding is no direct threat or available reasonable accommodation, it shall order reinstatement;
10. upon reaching a decision the Committee shall:
    a. Date in writing each finding;
    b. Include in the statement its reasons for the finding(s);
    c. Sign the statement;
11. the Direct Threat Hearing Committee Chair shall inform the student, Chief Student Affairs Officer or designee, and President of the decision and disposition in writing.

D. <u>Evidence</u>

Legal rules of evidence do not apply to hearings before the Direct Threat Hearing Committee. The Committee will consider evidence tending to prove or disprove whether the student constitutes a direct threat within the context of the classroom, lab setting or program as applicable. The Committee shall exclude irrelevant, immaterial and unduly repetitious evidence and evidence deemed not reasonably reliable or authentic. If the student chooses not to testify, no inference may be drawn from the failure to testify. If the student does testify, he or she may be questioned by the Chief Student Affairs Officer or designee, or committee members.

The Direct Threat Hearing Committee shall recognize as privileged, communications between a student and a member of the professional counseling staff such communications that were made

in the counsel of performance of official duties and were understood by the staff member and the student to be confidential or other communications with medical providers that should be considered privileged or protected by privacy laws. However, if the information disclosed presents an actual or threatened harm to the health or safety of any person (including the student), it is not privileged information and may be used for any appropriate purpose, including referral to the Strategies of Behavioral Intervention (SOBI) process.

E. Hearing Record

The Direct Threat Hearing Committee's record shall include:

1. A copy of the notice;
2. All documentation and evidence considered by the Committee;
3. The Committee's decision and disposition; and
4. A transcript or electronic record of the hearing (at the student's expense) if any.

The hearing record shall be kept separate from the student's academic record however, the decision shall be incorporated as appropriate into the student's academic record.

Right to Appeal Administrative Disposition - Petition for Administrative Review

Following the Direct Threat Hearing Committee consideration, a student or the Chief Student Affairs Officer (if the decision is for reinstatement) is entitled to petition the President of the College for administrative review. The student or Chief Student Affairs Officer (as applicable) shall file the petition with the Office of the President of the College within (10) ten class days from the date of the Direct Threat Hearing Committee's decision. The President may request additional evidence if needed. The decision of the President to uphold or reverse the Committee's decision should be issued within (30) thirty class days from the date of the Direct Threat Hearing Committee's decision. The President should address his/her decision in writing to the student with a copy to members of the Direct Threat Hearing Committee and the Chief Student Affairs Officer.

II. Behavioral Concerns

Strategies of Behavioral Intervention (SOBI)

In support of its commitment to provide a safe and supportive learning environment, the College District has developed a companion process to the Student Health –Threat to Health and Safety Procedure. Strategies of Behavioral Intervention (SOBI) is a process for assessing and addressing circumstances involving individuals exhibiting disruptive, threatening or violent behaviors, for alerting staff of potential concerns, for responding to individual incidents and for offering appropriate and timely interventions to resolve and/or prevent escalation of issues and such behaviors. These behaviors may be exhibited in the classrooms, lab areas, offices, field sites

and other educational settings, or via electronic means such as e-mail, discuss boards, online meeting spaces and audio video conferencing.

Under circumstances involving behavioral issues as described above, the SOBI process should be invoked. However, the Student Health –Threat to Health and Safety Procedure should also be followed if the student is to be excluded from the classroom, lab or program. For exclusion of the student, the threat assessment described in SOBI may be taken into consideration but will not take the place of the direct threat assessment described in this Procedure.

The Strategies of Behavioral Intervention (SOBI) Guide, a SOBI Quick Guide and the Behavioral Incident Report may be found at:

https://www.alamo.edu/siteassets/nvc/experience-nvc/current-students/wellness-center/documents/guide-sobi-quick.pdf

Legal Reference – TACC Policy Reference Manual
FFCA(LEGAL) – Student Support Services: Student Assistance Programs/Counseling