

Attention: President Chui L. Tsang  
Santa Monica College  
1900 Pico Blvd. Santa Monica, California 90405

From: Des Manttari, SMC Student  
P.O. Box 64563  
Los Angeles, CA 90064

Email: [savesmc@yahoo.com](mailto:savesmc@yahoo.com)  
Website: <http://savesmc.blogspot.com>

RE: DEMAND TO SET ASIDE SUSPENSION AND INTERIM SUSPENSION

VIA EMAIL AND CERTIFIED MAIL, RETURN RECEIPT REQUESTED

July 20, 2006

Dear President Tsang:

First I would like to thank you for responding. However, I would like to both clarify some important points as well as seek clarification from you.

In your July 18, 2006 email, you wrote the following: "I have reviewed your letter dated June 29, 2006. I am aware that the District is awaiting contact from your attorney in order to set a mutually agreeable date and time for your suspension hearing."

As you are aware, I filed a timely appeal from my suspension on June 6, 2006. In my appeal, I asked for the names and titles of the allegedly impartial appeal hearing committee. Despite this request, and numerous other written requests, I have yet to receive this information. Clearly, this information is being withheld to me, although Ms. Penchansky provided this information in writing to at least one other suspended student who requested it. I would like clarification on why this information is not being provided to me.

Furthermore, on the date I filed my timely appeal, the California Education Code as well as SMC's own Administrative Regulations stated that I was to be afforded an appeal hearing within 10 days. SMC did not set an appeal hearing within this time. On or about June 13, 2006, I emailed Robert Sammis, requesting dates for my appeal. I was even willing to provide an extension until the first week of July. Not hearing back from Mr. Sammis, I sent him a second email on June 16, 2006. Still, he did not respond until on or about July 17, 2006. Now, Mr. Sammis has emailed me again on or about July 18, 2006, now making excuses to postpone the hearing for at least another month.

Mr. Sammis writes the following to me: "Please note that during the summer months most faculty and staff are on vacation and thus we typically do not hold any hearings during the summer months. However, if you and your attorney desire to have a hearing prior to the beginning of the fall semester we will do our best to accommodate such a request."

This is not only unacceptable, but it is in clear violation of the law. Professor Jim Keeshen is available if needed to appear as a witness. SMC staff member Pat Green is available as SMC does its year-end fiscal accounting during the summer months and Ms. Green historically does not take her vacation until September, well after the fall semester has started. To the best of my knowledge, there are very few SMC witness employees in this case. However, SMC has refused to supply me with a list of witnesses, despite repeated written requests for such information.

Regardless, the law does not allow for SMC's efforts to accommodate a request for a timely appeal hearing, it mandates it within the 10 day time frame, which has long since elapsed due to SMC's failure to respond. Each day that goes by, SMC is in violation of my rights to due process and, as such, I am being illegally suspended from school. Not only am I being illegally suspended, I am being illegally withheld from entering campus without police "escort."

California Education Code 66017 states in regards to interim suspensions (as SMC has placed on me) that the suspended person shall be afforded an appeal hearing within 10 days. SMC's Administrative Regulation 4410 governing suspensions states in 2(E)(4): "A reasonable opportunity **shall be afforded** the suspended student for an appeals committee hearing within ten (10) school days." [emphasis added]

Under Hearing and Appeal Process, 2(F), Time Frame (2)(c), SMC's Administrative Regulation states the following: "The committee **shall convene** for an appeal hearing not sooner than six (6) school days and preferably not more than ten (10) school days after receiving the notice of intent to appeal. The student **shall be given** written notice of the time and place of the hearing. If the student fails to appear for the hearing, the decision of the College Disciplinarian shall stand." [emphasis added]

Clearly, this time has long since expired for SMC to maintain jurisdiction over my suspension or to further extend this time to the beginning of fall semester. I have expressed in my objections to these delays in writing and have thus exhausted my administrative remedies. The non-discretionary hearing and decision time limit of Education Code 66017 and SMC's supporting Administrative Regulations are enforceable as mandatory, not merely directory, and SMC's failure to comply with that time limit deprives it of jurisdiction to proceed with the suspension and interim suspension.

As seen by the bolded emphasized text in SMC's own administrative regulations, "shall" is mandatory while "may" is permissive. The California Supreme Court has clearly and unequivocally stated numerous times, most recently in California Correctional Peace Officers Assn. v. State Personnel Board (1995) 10 C4th 1133, 43 CR2d 693, that the word "shall" in a statute, as opposed to "may", creates an obligatory, non-discretionary duty to act as the statute directs. There is no discretion to do otherwise.

The statutory language, wherein its subdivisions stating "shall convene" and "shall be afforded" invokes the obligatory, non-discretionary time limit. This means that when I demanded a timely hearing as set forth in my June 13, 2006 email to Mr. Sammis, that demand created a mandatory, non-discretionary duty on the part of SMC to hold a suspension appeal hearing and to make a determination on the validity of charges and student conduct code violations that SMC has alleged I violated. Accordingly,

SMC was statutorily obligated to hold a hearing, and make a determination after the hearing within this time frame. It had, and does not still have, no discretion to do otherwise.

The same can be held true regarding the terms in the interim suspension, which was imposed effective on or about May 23, 2006 and to which I objected in my June 6, 2006 appeal under Third Specific Objection that the "immediate suspension is duly oppressive and burdensome and is a violation of [my] rights."

In further objecting to the interim suspension, I wrote the following in my appeal:

In further answering SMC's justification of an "immediate interim suspension," Manttari additionally objects on the grounds that this immediate suspension has violated her due process as set forth in AR 4410, Section 2(E)(4) in that SMC did not follow its own procedures in that the "College Disciplinarian" failed to "hold a formal conference with the student" and "present a clear statement of the charges." In further answering this section, Manttari objects on the grounds that SMC did not follow the required laws under state and federal law governing due process and immediate suspension procedures.

At all relevant time, you know, or should have known, that SMC caused to be served to me via email and later in letter a two-year suspension and immediate interim suspension from Santa Monica Community College. In the May 23, 2006 suspension email and letter, your name appears at the bottom of the Robert Adams' document as follows: "Cc: Dr. C. Tsang, Superintendent and President."

The May 23, 2006 suspension email and letter from SMC states the following:

"You are hereby notified that you are being suspended for two years (until Summer 2008), and an immediate interim suspension as authorized under AR 4410, Section 2(E)(4), from Santa Monica College as a result of several incidents reported by SMC Police, faculty and staff during the last year."

The May 23, 2006 suspension email and letter also states:

**During your suspension, which begins immediately, you may not be on any of the Santa Monica College campuses, including AET and all of the satellite campuses. You may not attend class. If you need to file an appeal or conduct official College business, you are required to check in with Campus Police first and they will escort you.** [bolded emphasis in original]

Cal. Penal Code 626.2 also makes clear two important provisions regarding enforcement. First, the suspension is "after a hearing," not before. Second, the student would have to be "served by registered or certified mail." SMC in this instant case is enforcing their refusal to allow me access to campus in without following either of these due process procedures.

California Penal Code 626.4 provides an overview of the procedures to follow regarding the denial of access to the campus. It makes clear several key points in section (b)(1)(2) as follows:

Whenever consent is withdrawn by any authorized officer or employee, other than the chief administrative officer, such officer or employee **shall as soon as is reasonably possible** submit a written report to the chief administrative officer. The report **shall contain** all of the following: [emphasis added]

(1) The description of the person from whom consent was withdrawn, including, if available, the person's name, address, and phone number.

(2) A statement of the facts giving rise to the withdrawal of consent.

If the chief administrative officer or, in the chief administrative officer's absence, a person designated by him or her for this purpose, upon reviewing the report, finds that there was reasonable cause to believe that such person has willfully disrupted the orderly operation of the campus or facility, he or she may enter written confirmation upon the report of the action taken by the officer or employee. **If the chief administrative officer or, in the chief administrative officer's absence, the person designated by him or her, does not confirm the action of the officer or employee within 24 hours after the time that consent was withdrawn, the action of the officer or employee shall be deemed void and of no force or effect**, except that any arrest made during such period shall not for this reason be deemed not to have been made for probable cause. [emphasis added].

Reference: California Penal Code 626.4 (b)(1)(2).

Notice that the law expressly states that there must be a written report and that the report must contain "all" of the following provisions including a statement of facts. To date, SMC has never submitted such a report to me and it is assumed that one does not exist. Therefore, since you, SMC President Chui L. Tsang, acting in your official capacity as chief administrative officer never confirmed the immediate interim suspension that precluded me from being on campus within the 24 hour allotted time period, it "shall be deemed void and of no force and effect."

According to California Penal Code 626.4 (c): **"In no case shall consent be withdrawn for longer than 14 days from the date upon which consent was initially withdrawn. The person from whom consent has been withdrawn may submit a written request for a hearing on the withdrawal within the two-week period."** [emphasis added]

SMC initially withdrew my consent on or about May 23, 2006. It is now July 20, 2006, almost two month later, and I have not been allowed to re-enter campus without constant police "escort." Since I filed and personally served (via Stephen Drury) a timely appeal and request for hearing on June 6, 2006, I was within the two-week period. I clearly objected to the immediate interim suspension as "duly oppressive and burdensome." (See: SMC Appeal, Third Specific Objection, Objection to Immediate Interim Suspension). I also complied with the requirements of providing an "address to which notice of hearing is to be sent." As indicated previously, SMC has not filed a report justifying the immediate interim suspension nor has anyone at SMC, including you, confirmed or denied the withdrawal of access to campus. As such, SMC is illegally withholding my access to its campus.

Furthermore, pursuant to SMC's College Policies governing Student Conduct, SMC promises in writing that it will adhere to its self-established "due process" requirements. The policy states in relevant part the following: "To protect the interests of both the College and its students, SMC has an established "due process" through which its disciplinary and removal powers are exercised. As a further safeguard of student rights, an appeal procedure exists for these policies, as well as for appeals of grades, matriculation, and disqualification. The Student Conduct Appeals Committee will hear student appeals." In this instant case, regarding the immediate interim suspension and the longer two-year suspension from Santa Monica College, SMC has not kept its written guarantees to due process.

The U.S. Constitution, Fourteenth Amendment, Section 1 (Rights Guaranteed, Due Process and Equal Protection) states: "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Clearly, the time and money I have invested in my education over the last 3 or so years at Santa Monica College qualifies as a protected property right within the meaning and intent of the 14th Amendment.

As previously indicated herein, SMC was under an obligatory, non-discretionary duty to respond to the validity of the interim suspension in the mandated time frame and to set it aside in any regard after the 14-day period. Moreover, SMC was under the same duty to provide me with an impartial appeal hearing in a timely manner. SMC cannot therefore complain that it does not conduct hearings during the summer months as a justification for not doing so. It had a statutory obligation otherwise. One can clearly weigh the injustice of my being endlessly deprived an education by delaying a decision in this matter versus the inconvenience of several SMC employees delaying or interrupting a summer vacation.

But these are not the only due process rights that SMC has failed to afford me. As you are aware by the certified letter I sent you, the emails personally directed to you or otherwise copied to you over the last several months, SMC has repeatedly failed to provide physical inspection of my disciplinary records maintained by Judith Penchansky. SMC has failed to provide documents to which it has made reference to in my disciplinary file. SMC has failed to provide me the names and titles of the allegedly impartial appeal hearing committee. While I have been deprived an opportunity to enter campus to obtain favorable witnesses and evidence in my case (without constant police surveillance, which alone would intimidate any witnesses I would wish to obtain or interview), in addition to meeting with the ADA compliance officer and to my First Amendment right to email SMC employees without allegedly being in violation of SMC's vague student conduct code, SMC has gone out of its way to allegedly coerce, bribe, and otherwise intimidate witnesses to champion its cause against me.

As can be clearly seen by glancing through the documents that Robert Sammis did provide me on or about June 12, 2006, there has been no impartiality or fundamental fairness since the start. At this point, even if the suspension was not set aside and SMC were to provide me an immediate appeal hearing, it would not be impartial, but a kangaroo court in which both Mr. Sammis and Ms. Penchansky would

act as judge, jury, and executioner in my case. It would be a case in which I cannot judge whether the appeal committee is impartial and what documents have been used against me as SMC continues for now almost a year to withhold physical inspection of my disciplinary records in violation of the law. SMC has gone out of its way to create such a lynch mob mentality that none of the witnesses called would be honest, fair, or impartial at this point.

You further wrote the following to me in your last email: "Please be advised that under Administrative Regulation 4410, if the Appeal Committee upholds your suspension, you have the right to appeal that decision to me. Thus, at this point in time it would be inappropriate for me to review in detail your comments concerning the underlying reasons(s) for your suspension."

I question the validity of your statement to me. First, because the original suspension letter was sent to you. At this time, you were under a duty to confirm or deny the interim suspension, which you did not do. Secondly, as is evident in many emails from various SMC employees, including Judith Penschansky, you have allegedly played an active role in procuring my wrongful suspension from the very beginning when you took over the presidency of Santa Monica College. Furthermore, you participated on or about April 10, 2006 with various members of the SMC Board of Trustees and Mr. Sammis to discuss how to suspend me from SMC behind closed door sessions.

How can Thomas J. Baker, Mario Alarcon, Jim Keeshen and others at SMC be readily afforded advocates against me (without any investigation into the validity of their allegations), and legal advice from Robert Sammis, yet not a single person at SMC has advocated on my behalf? How can you be an impartial person to appeal my suspension if you have been vigorously involved in seeing me suspended? If SMC has not complied with the law for over a year, what assurance do I have that SMC will suddenly comply with the law now? Clearly, SMC's actions through its agents and employees and third parties indicate otherwise. At all stages of the disciplinary process, I have been found guilty.

For all these reasons, the two-year suspension and interim immediate suspension should be set aside immediately and the wrongful disciplinary hold placed on my student records should be removed so that I can register for fall semester classes.

Alternatively, if you do not set aside the suspension, then I request an immediate suspension appeal hearing **by no later than Monday, July 31, 2006**. Accordingly, if such suspension appeal hearing is forthcoming, I am making a written demand once again for the names and titles of the appeal hearing committee, the names of witnesses that SMC plans to call against me, the disclosure of documents that I have repeatedly asked for, and physical inspection of my disciplinary file at least four (4) days prior to any hearing.

Since time is of the essence, I respectfully request that you respond to this email by tomorrow afternoon, July 21, 2006, before the close of business at SMC. Please respond via email to this email address and /or to my SAVE SMC yahoo email address contained herein.

Furthermore, by copy of this email and letter, I ask that my email be printed out and included in my student disciplinary records and suspension appeal file maintained by Judith Penschansky, the Office of Judicial Affairs, and Santa Monica College.

I thank you for your time and eagerly await your prompt response.

Very Truly Yours,

Des Manttari /s/

CC: Nancy Greenstein, Chair, SMC Board of Trustees  
Susan Aminoff, Vice-Chair, SMC Board of Trustees  
Office for Civil Rights, U.S. Department of Education