

ATTENTION: PRESIDENT CHUI L. TSANG,
SANTA MONICA COMMUNITY COLLEGE DISTRICT
1900 PICO BLVD. SANTA MONICA, CA 90405

RE: WRITTEN DEMAND FOR SMC POST-EXCLUSION HEARING

VIA EMAIL AND CERTIFIED MAIL, RETURN RECEIPT REQUESTED

DECEMBER 5, 2006

Dear President Tsang,

I am writing to you to request a post-exclusion hearing within the next seven (7) days as required by statute based on Santa Monica College Police Department's Withdrawal of Consent to Remain on Campus, dated November 30, 2006, and as set forth in California Penal Code Section 626.6.

As you are well aware, based on my numerous emails and certified letters to you over the past several months, I was wrongfully suspended for two years from Santa Monica Community College (hereinafter "SMC") without any finding of facts or investigation. Pursuant to Robert Sammis' written communications, SMC's own internal board policies, and the California Education Code, I was to be afforded a suspension appeal hearing within ten (10) days of the date I filed my appeal back in June 2006.

Despite my written insistence that SMC comply with the law, I was not afforded a suspension appeal hearing. Rather, Mr. Sammis (who no longer works for the college as its in-house legal counsel) unilaterally postponed that hearing until mid-September, in violation of my rights. A few days prior to this hearing, SMC's Office of Judicial Affairs, unilaterally cancelled the hearing, despite my written objections.

To date, I have never been afforded a suspension appeal hearing, despite the length and breathe of the deprivation of my property rights to a public education at your school. Additionally, since August 2005, I have requested in writing that I be allowed to inspect my student records, including disciplinary records, and have been denied this opportunity as statutorily set forth in the California Education Code. Furthermore, I had sent you, on August 1, 2006, a legitimate request for inspection and copies of vital records not otherwise prohibited from disclosure under the California Public Records Act. Although the California Government Code is clear that such records, absent a written justification for non-compliance, shall be produced within ten (10) days, SMC simply ignored my request, thus necessitating court intervention. Over four months have elapsed since this public records request and SMC has still failed to provide these records.

As you should be aware, when a suspension appeal hearing is not afforded a student, especially in the light of SMC's restrictions from entering campus, both substantive and procedural due process have been denied said student. Add to this injury that most of the boilerplate allegations against me were based on constitutionally overbroad restrictions of free speech issues and the right to redress the college for

grievances, and my rights have been grossly violated on all levels, through SMC's own written policies, the California statutes, and the Constitutional safeguards. Furthermore, when due process is not afforded a student such as myself who has complied with all her obligations under the law, the suspension becomes null and void. The law is very specific that there is no need to continually exhaust administrative remedies when such efforts have become futile. Not only in the instant case have these efforts on my part become futile, SMC has used its campus police force in conjunction with the Office of Judicial Affairs, to retaliate against me.

Accordingly, since the suspension has become null and void at this point, SMC's Admissions Office sent me a written confirmation in the U.S. mail that I could enroll in the Winter 2007 and Spring 2007 semesters. This was further confirmed in emails sent from the college as well as the online SMC student self-serve system. I was given an enrollment date and time for November 17, 2006 at 4:00 p.m. for said semesters. However, on the allotted date and time that I was to register, a mysterious and malicious "disciplinary enrollment hold" was placed on my enrollment, preventing me from registering.

To clear this up, I came to campus on or about Wednesday, November 22, 2006. At this time, Admissions informed me that I could in fact enroll for classes for these semesters. I was given two copies of an official letter from SMC stating this fact and which confirmed the November 17, 2006 enrollment date and time.

I returned to campus again on November 30, 2006 and spoke with Station C, now called the Bursar's Office. Station C again confirmed that I could enroll, but that I had to speak with the Counseling Office to print out a copy of my signature page. I was instructed to sign the signature page and turn it into the Admissions Office.

At this point, I immediately complied and spoke with a counselor in the Counseling office. Two copies of my signature page were printing out for me and I signed one copy. However, on my way to the Admissions Office, near the Cayton Center, I was accosted by SMCPD Officer Mark Kessler, who was later joined by Officer Charles Bays. I was told that I had to accompany him to the Office of Judicial Affairs and speak with Judith Penchansky to have the enrollment hold issue resolved. I once again peacefully complied.

However, Ms. Penchansky once again blatantly violated my rights. When I was in the middle of my first sentence with her, explaining that admissions had sent me a letter, she abruptly cut me off and stated point blank, "You've been suspended for two years, Des." When I then indicated that SMC's board policies and the California Education afforded me a suspension appeal hearing within ten days, she once again cut me off and stated rather rudely, "Des, we're not having this conversation." At this point, Ms. Penchansky turned to Officer Kessler and ordered, "Officer, she needs to leave campus." When I asked her upon which grounds, she stated to me, "Des, you can't be here. You need to be escorted off campus." Again, she stated to Officer Kessler, "Officer, she needs to go."

At this point, Officer Kessler, Officer Bays, and I quietly left the Office of Judicial Affairs. Shortly thereafter, Officer Kessler issued the aforementioned "Withdrawal of Consent to Remain on Campus," citing California Penal Code section 626.6. Under this statute, I have been barred from campus for seven (7) days under the guise that I was "committing any act likely to interfere with the peaceful conduct of

activities or such campus or facility, or has entered such campus or facility for the purpose of committing any such act." Since I had done absolutely nothing to warrant such a gross violation of my rights as a student of SMC, I did not consent to this withdrawal.

At the bottom of this Withdrawal Order, confirmation of the action is required by the Executive Officer or Designee, with a signature attesting to the fact, or lack thereof, that there was or was not "reasonable cause to believe that the above named individual committed an act that disrupted, or was likely to disrupt the peaceful conduct at Santa Monica College." To date, I have not received any confirmation of the action taken by the SMCPD on that date.

Clearly, neither you in your capacity as Chief Executive Officer of SMC or anyone you designate could come up with any legal rationale or finding of facts that I disrupted the orderly operations of the campus on this date. I was instructed by the college to enroll and I was peacefully on that campus to exercise that right. Furthermore, since I have never had a suspension appeal hearing, either I would be considered as still in the appeal process or that the suspension has been nullified. Therefore, under either theory, I am still a student at SMC and not an "outsider" or "non-student" as defined by California Penal Code 626.6. Given the fact that SMC has sent me multiple verifications of my ability to enroll as such in the two upcoming semesters, this gives further invalidity to this California Penal Code section.

If you further examine subsection 3(b), it clearly states the following: "The provisions of this section shall not be utilized to impinge upon the lawful exercise of constitutionally protected rights and freedom of speech or assembly." As such, my rights have been violated.

The various legal decisions have found that California Penal Code Sections 626.4 and 626.6 on their face suffer from the defects of First Amendment overbreadth, unconstitutional vagueness, and the lack of procedural due process. The purpose of this legislation is to provide a swift remedy, by means of exclusion from campus, of those students who commit overt acts of violence or otherwise engage in illegal conduct which disrupts "the orderly operation of such campus." This law is to protect SMC from illegal campus disturbances or from the possibility of disturbance. Since no disturbance took place on November 30, 2006 and none could be reasonably anticipated, as there were no facts to point to this belief, there were simply no grounds to exclude me from campus for an entire week.

The law is quite firm that a willful disruption is one of physical nature of such magnitude that due process is sacrificed for the sake of an emergency situation. There was simply no substantial and material threat or significant injury to persons or property warranting exclusion from campus. The law further makes clear that SMC must prove "beyond a reasonable doubt" that the exclusion order rested upon an actual disruption by unlawful conduct, something that SMC cannot possibly do without outright fabricating circumstances and facts surrounding the events of my day on campus.

Accordingly, when an exclusion order issues without a hearing, as is the case here, a post-exclusion hearing must be held as soon as reasonably possible and not later than seven (7) days following a request by the person excluded. By copy of this written demand, I am requesting that the exclusion order be immediately revoked

and that I be allowed to enroll in my classes peacefully or that a post-exclusion hearing be held to either prove or deny the facts that I had disrupted the orderly operations of the SMC campus on November 30, 2006.

A broad reading of section 626.6 yields such constitutionally impermissible applications, that I urge you to declare this exclusion order void on its face. Neither the content of speech nor freedom of association can be restricted merely because such expression or association disrupts the tranquility of a campus or offends the tastes of school administrators such as Ms. Penchansky. Citing from the court's decision, "Protest may disturb the placidity of the vacant mind just as a stone dropped in a still pool may disturb the tranquility of the surface waters, but the courts have never held that such 'disruption' falls outside the boundaries of the First Amendment."

The landmark case of *Tinker v. Des Moines School District* (1969) made clear that "undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. Any departure of absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on campus, that deviates from the view of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk."

Terminiello v. Chicago (1949) adds that "a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger." Although the tastes of administrators, students or the public may be offended, campus free speech cannot be restricted merely because others find its exercise distasteful. *Papish v. University of Missouri Curators* (1973) states that "the mere dissemination of ideas -- no matter how offensive to good taste -- on a state university campus may not be shut off in the name alone of 'conventions of decency'."

Although conduct entwined with speech may be regulated if it is completely incompatible with the peaceful functioning of the campus, section 626.6 on its fact fails to distinguish between protected activities such as peacefully trying to resolve my enrollment hold issues and unprotected conduct that is violent, physically obstructive, or otherwise coercive. Since my speech and activities on campus were in no way offensive to anyone, perhaps with the exception of Ms. Penchansky who seems to have a personal vendetta against me, and refuses to acknowledge why my rights have been violated for the last six months, there is no conceivable way that this exclusion order would hold up under intense scrutiny.

To reiterate, I request that the exclusion order be forthwith withdrawn by you, or absent a withdrawal, that a hearing be held on the November 30, 2006 exclusion order within seven (7) days. The notice of time, place, and date of such hearing, should you choose the later alternative, should be mailed to the following address:

Des Manttari, P.O. Box 64563, Los Angeles, CA, 90064.

Additionally, by copy of this written correspondence, I ask that the two year suspension be nullified based on SMC's refusal to give me the required appeal hearing as set forth by law and that I be allowed to enroll in my classes as promised

in writing by the Admissions Office. Finally, I ask for a confirmation by you whether SMC intends to comply with my August 1, 2006 request for inspection and copies of records under the California Public Records Act.

I look forward to your prompt response to this very urgent matter of the ongoing violation of my rights as a student at Santa Monica College.

Very Truly Yours,

Des Manttari /s/

cc: Office For Civil Rights