Procedure IV.4002.A.a, Protection from Retaliation for Reporting Suspected Wrongdoing

Associated Policy
Policy IV.4002.A, Protection from Retaliation for Reporting Suspected Wrongdoing

Procedures

1. Introduction

Retaliation is workplace conduct or employment decisions that a reasonable employee would view as materially adverse and whose purpose or effect is to discourage employees from exercising their rights under this procedure or under the law. These rights include, but are not limited to, filing a complaint under this procedure; reporting a violation of law to an appropriate law enforcement agency; assisting another employee in the filing of a complaint; providing information during an investigation or testifying in a legal proceeding; and filing an Equal Employment Opportunity Commission (EEOC) charge. Retaliation against employees who engage in protected conduct is expressly prohibited. The protection against retaliation applies to all good-faith complaints, even if the complaints ultimately are not substantiated.

Employees who intentionally file a false or improper report of wrongdoing will be subject to disciplinary action up to and including termination.

Employee complaints about an employee's terms or conditions of employment, including complaints related to harassment, discipline, compensation, and leaves of absence, should be brought forward by following the College's employment practices, policies and procedures, including the **Policy IV-B-3-b, Employee Harassment** and the **Policy IV-I, Employee Concerns and Grievances**.

Student complaints about grades, discipline, or academic records should be brought forward by following the College's student services policies, including the **Policy IV-B-3-a, Student Harassment**, the **Policy V.5001.C, Student Final Grade Appeal**, the General **Policy VI.6004.B, Student Conduct and Discipline**, and the **Policy VI.6000.A, Student Records Management**.

2. Procedure for Submitting a Retaliation Complaint

Informal resolution:

Any employee may seek advice or information on matters related to this procedure without having to lodge a formal complaint. Employees may seek informal guidance by contacting the Vice

Chancellor of Human Resources or designee. The administrator responding to the informal complaint shall maintain a written record of the terms and conditions of any informal resolution.

Formal Complaints:

Formal complaints may be submitted to the Vice Chancellor of Human Resources, or designee. Use of the informal resolution process is not a prerequisite to filing a formal complaint.

Employees who are subjected to conduct in violation of this procedure are encouraged to report the conduct, as soon as practicable, before the conduct becomes severe or pervasive, so that the College may take appropriate action to investigate and remedy the improper conduct. A delay in reporting may impair the College's ability to investigate or to take corrective action.

Formal complaints shall be in writing and shall contain the following information:

1. Complainant's name and contact information
2. Name and work location of the person(s) accused of retaliation
3. Date(s) of the alleged retaliation
4. A description of the alleged retaliation, including specific details regarding the conduct that is alleged to be retaliatory
5. A description of any other relevant information that shows a retaliatory motive for the conduct
6. Copies of pertinent documents and physical evidence, when applicable
7. Names of material witnesses
8. Remedy requested by the complainant
9. Complainant's signature and date of submission

The following communications do not constitute a retaliation complaint for purposes of this procedure:

- oral allegations
- anonymous complaints
- courtesy copies of correspondence filed with other agencies
- informal inquiries seeking advice or information only

3. Investigation of Formal Complaints

- All formal complaints shall be sent to the Vice Chancellor of Human Resources, or designee, for evaluation and processing, unless the Vice Chancellor of Human Resources is the subject of the complaint. If the Vice Chancellor of Human Resources is the subject of the formal complaint, then the complaint shall be routed to the Chancellor for evaluation and processing. Retaliation complaints against the Chancellor or a Board member shall be submitted directly to the Chairman of the Board of Trustees. If the Chairman of the Board

of Trustees is the individual accused of retaliation, then the report shall be submitted to the Vice Chairman of the Board of Trustees. The Board shall take appropriate action to investigate the complaint.

- Each person who receives a retaliation report shall treat the information confidentially and shall share the information only with others in the administration who have a legitimate need to know. Confidentiality is necessary to prevent the destruction, removal, or alteration of evidence; to protect witnesses who have come forward from retaliation; and to minimize the risk of premature disclosure of information that may adversely impact individuals who may be erroneously accused.

- Within five (5) working days of receipt of the complaint, the Vice Chancellor of Human Resources, or designee, shall determine (i) whether the allegations in the complaint are subject to this procedure and (ii) whether the complaint shall be handled internally and administratively or whether an outside auditor, investigator, or other consultant shall be engaged to conduct the review. If the Vice Chancellor of Human Resources, or designee, determines that the complaint is subject to this procedure, the Vice Chancellor of Human Resources shall inform the complainant and shall identify the individual(s) who will conduct the investigation. If the Vice Chancellor Human Resources, or designee, determines that the complaint does not fall within the procedure or does not comply with the requirements of this procedure, the Vice Chancellor of Human Resources shall notify the complainant and state the reason for that determination. In the event that the complaint lacks sufficient information, the Vice Chancellor of Human Resources, or designee, shall provide the complainant a reasonable opportunity to submit additional information.

- The Vice Chancellor of Human Resources, or designee, shall inform the individual accused of retaliation (the "respondent") of the nature of the allegations and the status of the complaint at the point and to the extent that the Vice Chancellor of Human Resources, or designee, determine that notification will not compromise the integrity of the investigation. The respondent shall be informed in writing by the Vice Chancellor of Human Resources, or designee, that contacting the complainant about the complaint is prohibited and that retaliation of any kind may result in disciplinary action, up to and including termination. In some instances, temporary suspension or removal of the respondent from the work site may be implemented during the investigation.

- The designated investigator, whether internal or external, shall promptly investigate each complaint, demonstrating appropriate urgency. Prompt investigation means that the investigation is commenced and completed as expeditiously as possible given the nature and complexity of the allegations. The designated investigator shall interview the complainant, the respondent, and other persons whom the investigator determines may possess pertinent factual information. The complainant and respondent shall cooperate in the scheduling of an interview and shall promptly respond to the investigator's requests for information.

- To maintain the integrity of an on-going investigation, all individuals who are involved in the investigation, including the complainant and the respondent, shall exercise good judgment and refrain from discussing the matter with third parties and other employees or students who do not have a legitimate, business-related need to know. Persons who violate the confidentiality rights of other individuals or who engage in conduct that reasonably may be perceived as witness intimidation or retaliation may be subject to disciplinary action up to and including termination.

- The College's objective is to complete the investigation within thirty (30) calendar days of receipt of the complaint. If the investigator determines that additional time is needed, he or she shall promptly notify the complainant, the respondent, and the administrator facilitating the investigation.

4. Report of Findings

The designated investigator shall submit a proposed statement of findings and copies of relevant documents to the Vice Chancellor of Human Resources, or designee. The investigator and the Vice Chancellor of Human Resources, or designee, shall meet to determine whether further investigation is needed. Once the investigation is determined to be concluded, the investigator shall provide a summary of the fact-finding report to the Vice Chancellor of Human Resources, or designee. The Vice Chancellor of Human Resources shall determine whether there is evidence of a procedure violation and whether corrective action or other remedy is warranted. The Vice Chancellor of Human Resources, or designee, shall communicate the findings to the Chancellor. In the event of a complaint against the Chancellor or a Trustee, the Board shall make these determinations.

The Vice Chancellor of Human Resources, or designee, shall notify the complainant, respondent, and leader of the respondent of the findings and the administration's response to the findings. If the complainant or respondent is dissatisfied with the administration's response to the findings, the affected employee may appeal in writing to the Chancellor or designee. The complainant or respondent must file the appeal within five (5) working days of receipt of the administration's response. The appeal must be received by the Chancellor prior to the deadline. The Chancellor or designee shall schedule a meeting with the employee within five (5) working days of receipt of the appeal. The Chancellor or designee shall reply in writing within ten (10) working days after the meeting. No new information will be received by the Chancellor unless the employee establishes good cause for not having submitted the information during the investigation. The deadlines may be extended by mutual consent.

If the decision of the Chancellor or his or her designee is not satisfactory to the employee, the employee may present the facts to the Board at the next regular meeting in accordance with the process for hearing of citizens.

5. Deadlines Applicable to Texas Whistleblower Act Complaints

The Texas Whistleblower Act prohibits retaliation against public employees who in good faith report violations of law to an appropriate law enforcement agency. (Section 554.002 of the Texas Government Code.) A public employee may file suit for damages and/or reinstatement, lost wages, court costs, and legal fees.

An appropriate law enforcement authority is one that the employee believes in good faith is authorized to regulate or enforce the law alleged to be violated or to investigate or prosecute a violation of criminal law. Before filing suit relating to a suspension, termination, or other adverse personnel action, a public employee first must file a complaint using the employer's complaint procedure. The employee must invoke the complaint procedure "not later than the 90th day after the date the alleged violation [of the Whistleblower Act] occurred or was discovered using reasonable diligence."

If the College does not render a final decision on the complaint before the 61st day after the complaint procedure was invoked, the employee may elect to:

- Exhaust the College's complaint procedure, in which case the employee may sue not later than 30th day after those procedures are exhausted (i.e., completed all steps of the College complaint process); or
- Terminate the College complaint procedure, in which event the employee may sue within the time remaining (i.e., file suit not later than the 90th day on which the alleged violation occurred or was discovered by the employee through reasonable diligence).

Additional information regarding the Texas Whistleblower Act is available on the web page of the Office of the Texas Attorney General.

6. Prevention of Retaliation

The College shall publish on its web page information that informs employees how to file a complaint.

Definitions
Retaliation: Any adverse action taken against an employee for filing a complaint or supporting another employee's complaint under a variety of laws.

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Primary Owner of Policy Associated with the Procedure	Vice Chancellor, Human Resources
Secondary Owner of Policy Associated with the Procedure	Vice President, Human Resources