

Chapter 7 – Human Resources

AP 7700 Whistleblower Protection

References:

Education Code Sections 87160-87164; Labor Code Section 1102.5; Government Code Section 53296; Private Attorney General Act of 2004 (Labor Code Section 2698); Affordable Care Act (29 U.S.C. 218C)

Individuals are encouraged to report suspected incidents of unlawful activities by College employees in the performance of their duties, students, or third parties. Reports will be investigated promptly and appropriate remedies applied. Employees, [students, or third parties](#) who, in good faith, oppose such activities, reported such activities and/or assist the College in ~~the~~ [an](#) investigation will be protected from retaliation.

This procedure sets out the processes for responding to and investigating reports of unlawful activities, as defined in BP 7700 and addressing complaints of retaliation for making such reports.

When a report of retaliation is related to a complaint of, opposition to, or participation in an investigation of discrimination or harassment, then AP 3435 shall be the appropriate procedure for addressing such a report of retaliation.

Filing a Report of Suspected Unlawful Activities

Any person may report allegations of suspected unlawful activities. Knowledge or suspicion of such unlawful activities may originate from ~~academic personnel, staff, or administrators carrying out their assigned duties, internal or external auditors, law enforcement, regulatory agencies, customers, vendors, students, or other third parties~~ employees, students or third parties.

The College has established an anonymous reporting mechanism for all employees, students, or third parties to report activities. Anonymous reports will be investigated to the extent possible. However, employees are strongly encouraged not to report anonymously because doing so impedes the College's ability to thoroughly investigate the claim and take appropriate remedial measures. As set forth fully below, retaliation against individuals who report suspected unlawful activities will not be tolerated.

~~Normally, a~~ A report by a [student or third party should be made to Student Life, Human Resources, or Campus Safety.](#) A report by a College employee of allegations of a suspected unlawful activity should be made to the reporting employee's immediate supervisor or other appropriate administrator or supervisor within the operating unit. However, if the report involves or implicates the direct supervisor or others in the operating unit, the report may be made to any another College official whom the reporting employee believes to have either responsibility over the affected area or the authority to review the alleged unlawful activity on behalf of the College. When the alleged unlawful activity involves the College President/CEO, the report

should be made to the President of the Board of Trustees. When the alleged unlawful activity involves the Board of Trustees or one of its members, the report should be made to the College President/CEO who will confer with the President of the Board of Trustees and/or legal counsel on how to proceed.

Allegations of suspected unlawful activities should be made in writing so as to assure a clear understanding of the issues raised, but may be made orally. Such reports should be factual and contain as much specific information as possible. The receiving supervisor or administrator should elicit as much information as possible. If the report is made orally, the receiving supervisor or administrator shall reduce it to writing and make every attempt to get the reporter to confirm ~~by his or her~~with their signature that it is accurate and complete.

When the activity involves unlawful discrimination, harassment, sexual misconduct, dating violence, domestic violence, or stalking the reporting party must report such activities directly to the Director of Equal Employment Opportunity Programs/ Title IX Coordinator.

Once the receiving supervisor or administrator has received and/or prepared a written report of the alleged unlawful activity, he or she must immediately forward to the College President/CEO, or designee, where the alleged activity has occurred. However, if this process would require submitting the report to an employee implicated in the report, the receiving supervisor or administrator should follow the reporting options outlined, above. The higher-level administrator or Board member who receives the written report pursuant to this paragraph is responsible for ensuring that a prompt and complete investigation is made by an individual with the competence and objectivity to conduct the investigation, and that the assistance of counsel and/or an outside investigator is secured if deemed necessary.

In the course of investigating allegations of unlawful conduct/activity, all individuals who are contacted and/or interviewed shall be advised of ~~the College's no-retaliation policy~~. BP 7700, which includes a prohibition ~~of~~of retaliation. Each individual shall be: (a1) warned that retaliation against the reporter(s) and/or others participating in the investigation will subject ~~the employee~~to discipline up to and including termination and/or expulsion when applicable; and (2b) advised that if he or she experiences retaliation for cooperating in the investigation, then it must be reported immediately.

In the event that an investigation into alleged unlawful activity determines that the allegations are accurate, and promptly, ~~and~~appropriate corrective action shall be taken.

Protection from Retaliation

When a person makes a good-faith report of suspected unlawful activities to an appropriate authority, the report is known as a protected disclosure. College employees, students and third parties ~~and applicants for employment~~ who make a protected disclosure are protected from retaliation.

Any employee who believes he or she has been (1) subjected to or affected by retaliatory conduct for reporting suspected unlawful activity, or (2) for ~~refusing to engage in~~opposing an activity that would result in a violation of law, should report such conduct to the appropriate

supervisory personnel (if such supervisory personnel is not the source of or otherwise involved in the retaliatory conduct). Any supervisory employee who receives such a report, or who is otherwise is aware of retaliatory conduct, is required to advise ~~their~~ the College President/CEO or ~~his or her~~ designee. If the allegations of retaliation, or the underlying allegations of unlawful conduct involve the College President, the supervisor shall report to the highest level administrator and/or trustee who is not implicated in the reports of unlawful activity and retaliation.

All allegations of retaliation shall be investigated promptly and with discretion, and all information ~~obtained will be handled on a "need to know" basis~~ will only be shared with individuals who have a legitimate business need to know such information. At the conclusion of an investigation, as appropriate, remedial and/or disciplinary action will be taken where the allegations are verified and/or otherwise substantiated.

Informal Resolution of Incidents ~~Intake and Processing of the Complaint~~

Upon receiving notification of ~~a whistleblower or a~~ retaliation ~~report~~complaint, the Chief Human Resources Officer, or ~~his/her~~their designee, ~~shall~~shall:

Undertake efforts to uniformly resolve the ~~charges reported incident~~ informally, including but not limited to mediation, rearrangement of work/academic schedules, obtaining apologies, providing informal counseling and/or training or other informal action that brings resolution to the reported incident., ~~etc.;~~

~~Advise the complainant that they need not participate in an informal resolution of the complaint, as described above.~~

Determine whether further investigation review is necessary to ensure resolution of the matter and utilize the ~~investigation~~ process outlined below as appropriate. ;

Formal Resolutions of Incidents

If informal resolution of a retaliation complaint is not appropriate or the incident cannot be resolved informally, the Chief Human Resources Officer, or their designee, may formally review the incident and take appropriate action. Appropriate action by the immediate supervisor will include the following:

- a. Request a written account of the incident from the reporting party.
- b. Review the reporting party's written account of the incident and meet with other relevant involved parties, as needed.
- c. Analyze the incident as it relates to applicable board policies and recommend a course of action to the appropriate Vice President, or designee, with the assistance of Human Resources, as needed.

- d. Provide the reporting party with notification of the resolution of the reported incident.
- ~~— Inform Human Resources that Informal Resolution was not successful, or was not appropriate given the circumstances of the retaliation.~~
- ~~— Request a written account of the incident from the reporting party. In the event that the reporting party will not or cannot provide a written account of the incident, the immediate supervisor will continue to pursue resolution without undue delay.~~
- ~~— Review the reporting party's written account of the retaliation and meet with other relevant involved parties as needed.~~
- ~~— Analyze the retaliation as it relates to applicable board policies and recommend a course of action with the assistance of Human Resources as needed.~~

The College may take reasonable steps to protect the reporting party and other participants from retaliation as a result of communicating the reported incident and/or assisting with a review of the reported a whistleblower or retaliation incident. The Chief Human Resources Officer, or their designee, will also take reasonable steps to ensure the confidentiality of the reported incident and to protect the privacy of all parties to the extent possible without impeding the College's ability to review and respond effectively to an incident.

Courses of action may be remedial or disciplinary in nature. Remedial action may include, but is not limited to: referral to counseling, revision of department procedures, or additional training and education. Disciplinary action may include, but is not limited to: demotion, suspension, or termination.

~~When a report of retaliation is related to a complaint of, opposition to, or participation in an investigation of discrimination or harassment, then AP 3435 shall be the appropriate procedure for addressing such a report of retaliation.~~

If an individual does not adhere to BP 7700, the College may take disciplinary action against the responding party and/or take any other remedial action it determines to be appropriate. The action will be timely, effective, and commensurate with the severity of the circumstances. If discipline for is imposed, the nature of the discipline will not be communicated to the reporting party unless otherwise directed to by another College policy, state or federal law. The reporting party will be notified when the reported incident has been addressed and that the reporting party may report new incidents that occur.

Disciplinary action against faculty, staff and students will conform to all relevant statutes, regulations, Board policies and administrative procedures, including the provisions of any applicable collective bargaining agreement. In the event that informal resolution is unsuccessful, authorize the investigation of the complaint, and supervise and/or conduct a thorough, prompt and impartial investigation of the complaint, as set forth below. The investigation will include interviews with the complainant, the accused, and any other persons who may have relevant knowledge concerning the complaint. This may include victims of similar conduct.

~~Review the factual information gathered through the investigation to determine whether the alleged conduct constitutes a violation of BP 7700, giving consideration to all factual information and the totality of the circumstances, including the nature of the conduct, and the context in which the alleged incidents occurred.~~

~~Set forth the results of the investigation in a written report. The written report shall include a description of the circumstances giving rise to the complaint, a summary of the testimony of each witness, an analysis of any relevant data or other evidence collected during the investigation, a specific finding as to whether a violation of BP 7700 did or did not occur with respect to each allegation in the complaint, and any other appropriate information.~~

~~Provide the complainant and accused with an administrative determination. The complainant and accused shall be provided with a written notice setting forth the determination of the Chief Human Resources Officer, or his/her designee, as to whether a violation of the BP 7700 did or did not occur with respect to each allegation in the complaint; a description of action taken, if any, to prevent similar problems from occurring in the future; and the proposed resolution of the complaint. The results of the investigation and the administrative determination as to whether a violation of BP 7700 occurred shall also be reported to the accused, and the appropriate academic or administrative official(s). Reports to the complainant shall be prepared so as not to violate any applicable privacy rights of the accused.~~

~~Investigation of the Complaint~~

~~The College shall promptly investigate complaints of violations of BP 7700 when informal resolution is unsuccessful or not applicable. The Chief Human Resources Officer, or his/her designee, may limit the scope of the investigation as appropriate while seeking informal resolution to a whistleblower or retaliation complaint. The College will keep the investigation confidential to the extent possible, but cannot guarantee absolute confidentiality because release of some information on a "need-to-know-basis" is essential to a thorough investigation.~~

~~Investigation Steps: The College will fairly and objectively investigate BP 7700 complaints utilizing the following steps: interviewing the complainant(s); interviewing the accused individual(s); identifying and interviewing witnesses, if any; reminding all individuals interviewed of the College's no-retaliation policy; considering whether any involved person should be removed from the campus pending completion of the investigation; reviewing personnel/academic files of all involved parties; reach a conclusion as to the allegations and any appropriate disciplinary and remedial action; and see that all recommended action is carried out in a timely fashion.~~

~~Timeline for Completion: The College will undertake its investigation promptly and as swiftly as possible. To that end, the investigator shall complete the above steps, and prepare a written report.~~

~~Cooperation Encouraged:—All employees are expected to cooperate with a College investigation into allegations of violation of BP 7700. Lack of cooperation impedes the ability of the College to investigate thoroughly and respond effectively. However, lack of cooperation by a complainant, respondent or witnesses does not relieve the College of its obligation to investigate. The College may conduct an investigation if it is discovered that violation(s) of BP 7700 are, or may be occurring, with or without the cooperation of the alleged victim(s) and regardless of whether a complaint is filed.~~

~~Discipline and Corrective Action~~

~~If a violation of BP 7700 occurred, the College shall take disciplinary action against the accused and any other remedial action it determines to be appropriate. The action will be prompt, effective, and commensurate with the severity of the offense. If discipline is imposed, the nature of the discipline will not be communicated to the complainant.~~

~~Disciplinary actions against faculty, staff and students will conform to all relevant statutes, regulations, personnel policies and procedures, including the provisions of any applicable collective bargaining agreement.~~

~~The College shall also take reasonable steps to protect the complainant from further violations of BP 7700 and to protect the complainant and witnesses from retaliation as a result of communicating the complaint and/or assisting in the investigation. The College shall take reasonable steps to ensure the confidentiality of the investigation and to protect the privacy of all parties to the extent possible without impeding the College's ability to investigate and respond effectively to the complaint.~~

Requirement to Post Whistleblower Hotline

The College shall prominently display in lettering larger than size 14 point type a list of employees' rights and responsibilities under the whistleblower laws referenced in this procedure. The list shall include the telephone number of the whistleblower hotline, (800) 952-5665, for employees who have information regarding possible violations of State or federal statutes, rules, or regulations, or violations of fiduciary responsibility by a corporation or limited liability company to its shareholders, investors, or employees.

Other Remedies and Appropriate Agencies

In addition to the internal complaint process set forth above, any employee who has information concerning allegedly unlawful conduct may contact the appropriate government agency. The College has established an anonymous reporting program with The Network, an outside agency which is not operated by internal staff. Employees may report to this service toll-free at 1-866-367-7970 or online at <http://reportlineweb.com/mtsac>. Reports of fiscal waste, fraud, or other forms of fiscal abuse will be sent to the Chief Compliance Budget Officer, or designee.

Reports of retaliation or other forms of unethical or unwelcome conduct will be sent to the Vice President of Human Resources, or designee.

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