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PROCEDURES MEMORANDUM

TO: MCC Staff

FROM: Office of the President

SUBJECT: Guidelines for Use of the Board of Governors' Whistleblower Policy

DATE: May 13, 2008

PURPOSE: To support use of Board of Governors' Whistleblower Policy to encourage College employees to disclose information concerning possible violations of law and fiscal waste or fiscal mismanagement in College operations to appropriate College officials and to prohibit reprisals for such disclosure. This Procedures Memorandum is written with the intent of directly supporting the Metropolitan Community College Board of Governors' Whistleblower Policy.

SCOPE: This procedure applies to all College employees.

The Board Policies contain all the needed information for an employee to access the College Whistleblower Policy. The portions applicable to employees are as follows:

1. Purposes of College Whistleblower Policy

The purposes of the College Whistleblower Policy are to encourage College employees to disclose information concerning possible violations of law and fiscal waste or fiscal mismanagement in College operations to appropriate College officials and to prohibit reprisals for such disclosures.

The Board of Governors declares that it is in the vital interest of the people of the College's four county area that their community college operates in accordance with the law and without fraud, fiscal waste, or fiscal mismanagement. If this interest is to be protected, College employees must work in a climate where conscientious service is encouraged and disclosures of improprieties may be made without reprisal or fear of reprisal.

2. Definitions

For purposes of the College Whistleblower Policy

- A. Employee shall mean any person employed by the College, regardless of rank or position;
  - B. College Ombudsman means the College Ombudsman retained;
  - C. Personnel action shall include dismissing, demoting, transferring, reassigning, suspending, reprimanding, admonishing, reducing in rank, or reclassifying an employee, withholding work from an employee, requiring an employee to submit to a fitness-for-duty examination or take disability retirement, any other adverse involuntary action taken against an employee, or any threat thereof made against an employee, but shall not include any such action for which the employee has a remedy under any grievance or other internal procedure of the College.
  - D. Wrongdoing shall include any action by a College department, office, officer, employee, or member of the Board of Governors that (a) is a violation of any law, (b) results in gross mismanagement of public funds or gross waste of public funds, or (c) creates a substantial and specific danger to public health or safety.
3. Allegation of Wrongdoing; Investigation; Confidentiality; Report; College Ombudsman; Duties
- A. Any employee of the College may file a written allegation of wrongdoing with the College Ombudsman. The employee must sign and date the allegation.
  - B. Within thirty working days after receiving a signed and dated written allegation of wrongdoing from an employee, the College Ombudsman may conduct a preliminary investigation and determine whether reasonable grounds exist to support the employee's allegation. The College Ombudsman may consider the following factors in considering whether to proceed with a preliminary investigation:
    - 1) Whether the employee has available to him or her another remedy which the employee could reasonably be expected to use;
    - 2) Whether the allegation is trivial, frivolous, vexatious, or not made in good faith or has been delayed too long to justify present examination of its merit;
    - 3) Whether other allegations are more worthy of attention; or
    - 4) Whether the College Ombudsman's resources are insufficient for adequate investigation.
  - C. The identity of the employee presenting the allegation shall not be disclosed by the College Ombudsman, or by his or her investigators or agents, without the employee's prior written consent, except as reasonably necessitated in addressing the allegation or as may otherwise be required by law.

- D. When the College Ombudsman finds reason to believe that reasonable grounds exist to support the employee's allegation of wrongdoing, the College Ombudsman may conduct a formal investigation. The College Ombudsman shall inform the employee of his or her intent to conduct a formal investigation. Upon the conclusion of his or her formal investigation, the College Ombudsman shall prepare a report of his or her findings.
- E. On request of the College Ombudsman, any employee and any member of the Board of Governors shall cooperate in assisting and providing relevant information and copies of documents to the College Ombudsman respecting any preliminary or formal investigation of any allegation of wrongdoing and any related matter. If any employee or member of the Board of Governors refuses such a request of the College Ombudsman, and if the College Ombudsman is unable to persuade such individual to comply with the request, the College Ombudsman shall in writing report the refusal to each member of the Board of Governors.
- F. In considering whether to proceed with a preliminary investigation and in conducting any investigation or preparing any report, the College Ombudsman may consult with and request the assistance and advice of College Legal Counsel.
- G. The College Ombudsman shall transmit any report prepared pursuant to subsection (4) of this section to the College President, to each member of the Board of Governors, and to the Recording Secretary of the Board of Governors; provided, however, if the allegation and report are directed against the President, the College Ombudsman shall transmit the report to each member of the Board of Governors and to the Recording Secretary of the Board of Governors only. The report may include, but need not be limited to, any or all of the following:
- 1) A summary of the information received before the formal investigation was initiated;
  - 2) A description of the conduct of the formal investigation;
  - 3) A summary of any evidence obtained from the formal investigation;
  - 4) A listing of any violation or apparent violation of any law, rule, regulation, or college policy or practice; or
  - 5) A description of any action recommended as a result of the investigation including, but not limited to:
    - a) Changes in College rules, regulations, practices, or policies;
    - b) Disciplining the employees involved; or
    - c) Referring evidence of a criminal violation to an appropriate County Attorney.

- H. A copy of every report prepared pursuant to subsection (4) of this section shall be retained in the files of the Recording Secretary of the Board of Governors. Such a report shall be a public record and disclosable as such unless other grounds exist under law for the nondisclosure and withholding of the report from public disclosure.
- I. When the College Ombudsman terminates a preliminary investigation or a formal investigation of an allegation of wrongdoing, the College Ombudsman shall, in writing, promptly notify the employee who made the allegation.

#### 4. Employee Protections

Any person who has authority to recommend, approve, direct, or otherwise take or affect personnel action shall not, with respect to such authority:

- A. Take personnel action against an employee because of the disclosure by the employee to the College Ombudsman, or to any other official or representative of the College, of information that the employee reasonably believed evidenced wrongdoing;
- B. Except as provided below, take personnel action against an employee as a reprisal for the submission by the employee of an allegation of wrongdoing, or of a violation of this section, to the College Ombudsman; or
- C. Except as provided below, take personnel action against an employee as a reprisal for providing information or testimony, pursuant to an investigation or hearing held under the College Whistleblower Policy, to the College Ombudsman, the College President, the Board of Governors, or any member of the Board of Governors.

#### 5. Employee Protections; College Ombudsman; Powers and Duties

- A. Any allegation of a violation shall be in writing and filed with the College Ombudsman by the employee making the allegation. The employee shall sign and date the written allegation. On receipt of such an allegation, the College Ombudsman shall investigate to determine whether there are reasonable grounds to believe that a violation has occurred or is about to occur.
- B. On request of the College Ombudsman made in connection with an investigation of an allegation of a violation, any employee and any member of the Board of Governors shall cooperate in assisting and providing relevant information and copies of documents to the College Ombudsman. If any employee or member of the Board of Governors refuses such a request, and if the College Ombudsman is unable to persuade such individual to comply with the request, the College Ombudsman shall in writing report the refusal to each member of the Board of Governors.

- C. If the College Ombudsman terminates the investigation of an alleged violation, the College Ombudsman shall, in writing, promptly inform the employee who made the written allegation.
- D. If the College Ombudsman finds that there are reasonable grounds to believe by a preponderance of the evidence that a violation has occurred or is about to occur, he or she shall transmit a written report of his or her findings to the employee who made the written allegation. The College Ombudsman shall also transmit the written report of his or her findings in writing to the College President and to each member of the Board of Governors. In such report, the College Ombudsman shall specifically identify the employee(s) or representative(s) of the College who the College Ombudsman finds may have violated or be about to violate.

6. Employee Protection; Preliminary Finding of Violation; Hearings; Relief Authorized; Presumption; Attorney's Fees

- A. Upon receiving a written report of the College Ombudsman finding that there are reasonable grounds to believe by a preponderance of the evidence that a violation has occurred or is about to occur, the employee who made the allegation may petition the College President to hold a hearing to determine whether a violation has occurred or is about to occur. However, upon receiving a written report of the College Ombudsman finding that there are reasonable grounds to believe by a preponderance of the evidence that a violation has occurred or is about to occur and that it is the College President who has committed or is about to commit the violation, the employee who made the allegation may petition the Board of Governors to hold a hearing to determine whether a violation has occurred or is about to occur.
- B. Following the receipt of such a petition, the College President or the Board of Governors, as the case may be, shall, except as provided otherwise in subsection (5) of this section, hold a hearing to determine whether a violation has occurred or is about to occur. The employee may be represented by his or her own legal counsel at any hearing held under this section. Except as may otherwise be required by law, any hearing held under this section shall be closed to persons other than those directly involved in the hearing, their legal counsel, necessary witnesses, and other persons whose presence is necessary to a just determination of the matter. Witnesses may be excluded from the hearing room during those portions of the hearing at which their presence is not actually necessary.
- C. At any time prior to the hearing, the College President or Board of Governors may stay or reverse the personnel action, either as a final decision or temporarily until the hearing can be held to determine whether a violation is being contemplated or has occurred. Unless the College President or Board of Governors stays or reverses the personnel action, either as a final decision or

temporarily until the hearing is held pursuant to this section, the College President or Board of Governors shall hold the hearing within forty-five days of receipt of the employee's petition to determine whether a violation of section 12806 has occurred or is about to occur.

- D. In any case in which the personnel action is stayed or reversed only temporarily until the hearing is held pursuant to this section, the College President or Board of Governors shall within ninety days hold the hearing to determine whether a violation has occurred or is about to occur.
- E. No hearing shall be required under this section if the College President or Board of Governors reverses or permanently stays the alleged violation of section 12806 as a final action at any time prior to the hearing to determine whether a violation has occurred or is about to occur.
- F. Upon determining from the hearing or otherwise that a violation has occurred or is about to occur, the College President or Board of Governors, as the case may be, may grant such relief to an aggrieved employee as the College President or Board of Governors deems appropriate. Such relief may include backpay, reasonable attorney's fees, or other relief to the aggrieved employee, as deemed appropriate by the College President or Board of Governors, as the case may be. Any monetary relief authorized by this subsection, including reasonable attorney's fees, shall be paid from the College's general funds.
- G. The remedies provided herein shall be the exclusive remedies for any alleged violations of any of such sections.

7. Allegation of Wrongdoing or Violation of Employee Protection; College Official; Powers

A College official who receives an allegation of wrongdoing or of a violation may conduct a preliminary investigation of such allegation or refer such allegation to the College Ombudsman for investigation pursuant to section 12805 or section 12807. A copy of any written findings issued by the College Ombudsman pursuant to such an investigation shall be transmitted to the official referring the allegation.

8. Intentional Misuse of Act; Disciplinary Action

No employee shall intentionally misuse the College Whistleblower Policy. Intentional misuse shall include frivolous or vexatious use, attempts to treat a personnel grievance or personnel dispute as an allegation of wrongdoing, lack of good faith in invoking the Policy, and attempts to use the Policy or its procedures to obtain a resolution of views that do not satisfy the criteria prescribed for allegations of wrongdoing. The College Ombudsman or other College official may report to the College President any employee found by the College Ombudsman or official to have intentionally misused the College Whistleblower Policy. To the extent allowable by law, the College President may impose

any disciplinary action that the President deems appropriate under the circumstances respecting such an employee, subject to the right of the employee to request the Board of Governors to review any disciplinary action imposed by the President. Any such review, the scope of such review, and the procedure for any such review by the Board of Governors shall be at the discretion of the Board of Governors.

Adopted 1/2/01; Revised 11/16/04; Reviewed but no changes 5/13/08