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Chapter: Personnel

Modification No. 001

Subject: **Protection Against Retaliation**

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- I. Montgomery College has an interest in encouraging the reporting of alleged wrongdoing, and members of the community must be free from fear of retaliation to support that interest. In addition, the College has a responsibility to protect its employees from unlawful retaliation.
- II. It is the policy of Montgomery College to forbid anyone from taking any form of retaliatory action against any member of the Montgomery College community who, in good faith:
  - A. Voices concerns of ethical violations pursuant to established policies and procedures;
  - B. Seeks advice or aid in reporting wrongdoing pursuant to established policies and procedures;
  - C. Files a complaint or grievance pursuant to established policies and procedures;
  - D. Testifies or participates in investigations, proceedings or hearings pursuant to established policies and procedures;
  - E. Opposes actual or perceived violations of Montgomery College's policies and procedures or unlawful acts; or
  - F. Engages in any other protected activity defined by College policies and procedures.
- III. When the College is made aware of possible retaliation, it will take immediate and appropriate steps to investigate. The College will take appropriate action, up to and including discharge, against any employee who violates this policy.
- IV. Reports of retaliation will be kept confidential except to the extent that limited disclosure may be necessary for the purpose of conducting a full and fair investigation, providing opportunity for the subject to respond, taking remedial action, and responding to a government inquiry or legal action.
- V. This policy does not protect an individual who files a report or provides information as part of an investigation that the individual knows is false, files a bad faith retaliation claim or participates in any illegal conduct. Such conduct may subject the employee to appropriate disciplinary action, up to and including discharge. The failure to substantiate a claim of wrongdoing does not automatically constitute malicious intent or bad faith.
- VI. The president is authorized to develop and post procedures to implement this policy

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Board Approval: June 25, 2018

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I. Definitions

- A. Good Faith - Good faith means the individual providing information or a report of a violation has a reasonable belief in fact for reporting or providing the information. Providing or reporting malicious, false, or frivolous information with disregard to the truth, or knowingly omitting relevant information is not acting in good faith.
- B. Retaliation – Any adverse action taken or threatened against an individual because that individual engaged in any protected activities. Such adverse action can adversely affect or threaten to affect the employment rights or other interests of an individual and can take either work or social form.
- C. Protected Activities – Communication about or voicing concerns of suspected wrongful conduct pursuant to established College policies and procedures, participating in investigations or proceedings related to wrongful conduct pursuant to established college policies and procedures, or engaging in other permissible concerted or individual activities pursuant to established College policies and procedures.
- D. Wrongdoing – Unethical, illegal, or fraudulent business or employment activity in violation of College policies and procedures or applicable laws or regulations.

II. Examples of Activity to be Reported

- A. Work-related retaliation may include, but are not limited to:
  - 1. Unsubstantiated or unexplained adverse performance evaluations or disciplinary action;
  - 2. Unfounded negative job references;
  - 3. Unfounded denial of salary increases, promotions or other job benefits; and
  - 4. Unfounded or unexplained changed, reduced, or limited work assignments.
- B. Social retaliation in the workplace may include, but are not limited to:
  - 1. Discrimination or harassment from co-workers and/or supervisor;
  - 2. Bullying (as defined by 31011-Prevention of Bullying and Workplace Violence);
  - 3. Hostile work environment, described as conduct that is so persistent and pervasive as to alter the conditions of employment; and

- 4. Physical threats and/or destruction of personal or College property.
- C. Actions also considered retaliatory include any action taken or threatened by an employee that would dissuade a reasonable employee from engaging in activities protected by this policy.

III. Reporting Retaliation

- A. Any individual who believes that they or another member of the College community have been or are the subject of retaliatory action should make an oral or written report to any of the following:
  - 1. The Office of Employee and Labor Relations
  - 2. Union representative (for employees covered by collective bargaining)
  - 3. The Confidential Reporting line:  
Online Reporting [www.montgomerycollege.ethicspoint.com](http://www.montgomerycollege.ethicspoint.com)  
Toll-free Reporting Line: 844-572-2198
- B. A report should include information and lawful documents or data in support of the allegation, when possible:
  - 1. A detailed description of the retaliation;
  - 2. Name of individual(s) involved;
  - 3. The date(s) of the alleged retaliation; and,
  - 4. Any other details or data that may be important for the investigation including data, documents, evidence, or related information.
- C. Regardless of the method of reporting or to whom an initial report is made, all complaints will be reviewed by the Office of Employee and Labor Relations. If the complaint originated from or involves the Office of Employee and Labor Relations, the complaint will be reviewed by the Chief of Staff, or designee.
- D. Consultation for Employees
  - 1. The Office of the Ombuds exists for employees as a resource for consultation to discuss suspected retaliation. Employees may consult the Ombuds at any time for confidential discussions regarding any employee concern.
  - 2. The Ombuds is not, however, a resource for officially reporting retaliation.

IV. Response and Investigation

- A. If an investigation is appropriate, the Office of Employee and Labor Relations will designate an investigator. In the event of a clear conflict of interest, an external investigator may be assigned.
- B. The investigator will work with the alleged victim when determining the initial steps in the investigation.
- C. The investigation will be conducted in a fair and balanced manner with the purpose of objectively ascertaining what transpired.

- D. All information from the investigation will be shared on a strictly need-to-know basis in order to preserve confidentiality.
- E. The investigator will document the investigation, the conclusions reached, and also may offer recommendations for any disciplinary action to the Chief Human Resources Officer, or designee.
- F. The Chief Human Resources Officer, or designee, shall share the report findings with the General Counsel and appropriate College administrators.
- G. Anyone found to have retaliated against any member of the College community will be subject to disciplinary action, up to and including discharge.

V. Appeals

A complainant may file an appeal pursuant to the process outlined in 34101-Personnel Grievance Process for Staff Employees or pursuant to the applicable collective bargaining agreement.

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Administrative Approval: June 28, 2018