

## UCR Policies and Procedures

**Whistleblower Protection Policy—Local Procedure**

<b>Responsible Officer:</b>	Local Designated Official
<b>Responsible Office:</b>	Chief Compliance Office
<b>Origination Date:</b>	XX/XX/20XX – PROPOSED PROCEDURE
<b>Date of Revision:</b>	Initial Version
<b>Date of Last Review:</b>	Origination Date
<b>Scope:</b>	This procedure applies to all complaints filed under the University of California Whistleblower Protection Policy

**I. Introduction**

The [University of California Whistleblower Protection Policy](#) (WPP) is a grievance process available to employees (and certain other people) who believe they have been retaliated against for having made a Protected Disclosure (most commonly, a report of an Improper Governmental Activity), or refused to obey an Illegal Order. This is the procedure used by the University of California, Riverside (UC Riverside) to implement the WPP.<sup>1</sup>

Capitalized terms used in this procedure have the meanings given in Section II of the WPP. References to Sections are references to the WPP. In the event of any conflict between this procedure the WPP, the WPP will govern.

**II. Scope and Purpose of WPP**

The WPP is a specialized grievance procedure designed to ensure compliance with the California Whistleblower Protection Act, a state law prohibiting certain forms of retaliation by a UC employee. The WPP is:

- Available to employees, applicants for employment and former employees who experienced retaliation while they were employees.
- A process you can pursue even if you have initiated another complaint or grievance process.
- Designed to remedy certain instances of retaliation.

The WPP is not:

- A general or “catch-all” grievance or retaliation procedure. There are strict requirements for complaints to be eligible for processing under the WPP. For example, the following types of retaliation may not be eligible for processing under the WPP:
  - retaliation for reporting student misconduct. The WPP generally is focused on misconduct by the University, its employees, or agents.
  - retaliation for reporting actions that did not constitute an Improper Governmental Activity or a serious threat to health or safety.

<sup>1</sup> Section III(B) and (J).

- Other grievance or complaint mechanisms may be available to address complaints not eligible for processing under the WPP.<sup>2</sup>
- Protection from disciplinary action or other personnel action justified by legitimate, non-retaliatory reasons. Section III(E)(1).

### III. Complaint Review: Determination of Eligibility

The Locally Designated Official (LDO) is the campus official responsible for processing WPP complaints. The LDO reviews complaints to determine whether they are eligible for processing under the WPP and, if so, the allegations to be investigated. The UC Riverside LDO is the Associate Vice Chancellor/Chief Compliance Officer.

- Complaints should be filed using the UC Riverside Whistleblower Retaliation Complaint Form. A complaint must include the allegations required by the WPP and must be filed timely. The Complainant must also provide a Sworn Statement, made under penalty of perjury, that the contents of the complaint are true or believed to be true by the Complainant. Section III(C).
- The LDO reviews the complaint to determine whether it is eligible for processing under the WPP. Section III(D)(1).
  - The LDO may request that the Complainant provide additional information. Section III(D)(1)(c).
  - The LDO may consult with members of the Investigations Group and conduct other confidential inquiry or preliminary investigation, particularly to determine whether the Complainant engaged in a Protected Activity or experienced an Adverse Action. Section III(D)(1)(c).
- If a complaint (or parts of a complaint) are not accepted for processing under the WPP, the LDO notifies the Complainant in writing.
  - The Complainant has the opportunity to appeal to the UC System LDO. Section III(I).
  - The LDO will refer or investigate any allegation(s) not accepted under the WPP as appropriate under the Whistleblower Policy or other applicable policies and procedures. (Under the WPP, certain allegations that are not eligible for processing under the WPP may be appropriate for investigation under the University of California Whistleblower Policy.) Section III(D)(1).
- If an investigation is authorized, the LDO notifies the Complainant (Section III(D)(1)(d)) and, at the appropriate time, the respondent(s)<sup>3</sup> (Section III(D)(2)), that the complaint has been accepted and of the allegations to be investigated. (Allegations are discussed further under “Investigation Process” below.)
- Certain complaints may be referred to the Office of the President. Section III(H).

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<sup>2</sup> Other internal policies and procedures that may be available to you:

- For members of the Academic Senate whose rights or privileges as a faculty member have been violated, the Senate grievance process.
- For employees who have experienced discriminatory retaliation, the [Procedures for Employment Related Discrimination, Harassment and Retaliation Complaint and Resolution](#).
- For employees and students who have experienced retaliation for reporting conduct prohibited under the Sexual Violence and Sexual Harassment Policy, the [applicable adjudication procedure under that Policy](#).

<sup>3</sup> Referred to as the accused, in the WPP.

## IV. Investigation Process

Investigation is conducted by a designated investigator who produces an investigation report, which is then reviewed by the Chancellor or designee, who makes a final determination. The LDO may appoint someone to act as a Retaliation Complaint Officer (RCO), to oversee the investigation, or may themselves act as RCO. Similarly, the RCO may personally conduct the investigation or may delegate the fact-finding, in whole or in part, to an investigator. Section III(B)(4). The investigator may be a UC Riverside staff investigator or may be an external investigator. The investigation is a fact-finding process through which relevant evidence is collected and analyzed under the WPP and other applicable policies or laws.

UCR strives to complete the investigation report within six months of the complaint being accepted under the WPP. Extensions may be made for good cause, generally not to exceed twelve months.<sup>4</sup>

- The LDO issues a charge letter to the investigator (who may be the LDO) specifying the scope and purpose of the investigation and the allegations to be addressed.
  - Allegations summarize and present the key issues or questions being investigated, to allow a determination of whether the WPP was violated.<sup>5</sup> The allegations generally are not identical to the complaint(s) filed; for example, the allegations may not include all issues raised by the Complainant.
  - Allegations may be modified over the course of the investigation as additional information is collected. Significant modification, such as changes to respondents, may be cause for additional notifications to parties.
- The investigator determines the investigation plan including documents and other records to be collected, witnesses to be interviewed, and the timing of party and witness interviews, based on the investigator's professional judgment, knowledge and application of university policy and procedure, the nature of the investigation and review of evidence. Section III(D)(4)(a) and (c).
- Parties and witnesses have a duty to cooperate with the investigation and a responsibility not to interfere with the investigation. Section III(D)(4)(c)(ii) and (iii). Failure to cooperate or investigation interference will be considered misconduct and referred to the appropriate supervisor (and Human Resources) for management action.
- UC Riverside does not permit parties, witnesses, or other participants to record interviews or meetings. (California is a two-party consent state, which means that recording without both (or all) parties' consent is impermissible under law.)
- Parties are permitted to have an advisor. Parties shall notify the investigator of their advisor's identity in advance, so that the investigator can confirm that the advisor is not a witness or a supervisor/manager of a party. An advisor may accompany the party to interviews or other meetings.
  - The advisor may support and provide counsel to the party. The advisor is not permitted to answer questions for a party; parties are expected to speak for themselves.

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<sup>4</sup> Section III(D)(4)(e). Good cause may be shown by university closure(s), illness or other reasonable unavailability of necessary parties or witnesses, other proceedings (e.g., law enforcement investigation) or other circumstances beyond the requesting party's or administration's control.

<sup>5</sup> A WPP investigation may also address whistleblower complaints, particularly if the Protected Disclosure was a whistleblower complaint that has not been investigated or otherwise addressed. Any whistleblower allegations will be processed in accordance with the Whistleblower Policy.

- The investigator will provide the advisor with an opportunity to discuss the investigation process, ask questions or raise concerns. Interviews are not depositions or courtroom proceedings; legal objections are not appropriate. Advisors who disrupt the interview process may be asked to leave.
- When practicable, interviews will be conducted in person. Skype or other video conferencing or telephonic interviewing may be used when deemed appropriate by the investigator.<sup>6</sup>
- The respondent has the opportunity to respond in writing to the allegations and to comment on the documents on which the investigator plans to rely on in making findings.<sup>7</sup> Section III(D)(4)(b).
- Investigator produces a draft investigation report with findings of fact and the investigator's conclusion as to whether retaliation (as defined by the WPP) occurred, applying the standards of proof specified in the WPP (Section III(E)). If the RCO did not conduct the investigation, the RCO reviews the draft report for completeness and policy compliance, and may return the report for additional investigation or clarification. Section III(D)(4)(d). The RCO delivers the final investigation report to the LDO.<sup>8</sup> Section III(D)(4)(e). The investigation report is not shared with the parties during the investigation process; parties may request a copy of the report, according to the University policy governing privacy and access to personal information, when the investigation is concluded.<sup>9</sup>
- UC Riverside provides reasonable accommodations and interpreter services for parties as required by law. Please contact your investigator or the RCO with any requests.

## V. Chancellor's Determination

The LDO submits the report to the Chancellor or designee, who renders a final decision as to whether a violation occurred and determines relief as appropriate. The Chancellor's written decision will be issued within 18 months after the filing of the complaint, absent extenuating circumstances. Section III(F).

- The Chancellor may request further investigation or clarification in the report prior to making a decision.
- The Chancellor will issue a written decision, which will be provided to the Complainant and the respondent(s).
  - If the Chancellor determines that retaliation occurred, the Chancellor will determine any appropriate relief or remedial measures.
  - If the Chancellor decides that an employee violated the WPP, disciplinary action may be taken in accordance with applicable policy or collective bargaining agreement. Section III(G).
- The Chancellor's decision is final and not subject to appeal. Section III(I).

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<sup>6</sup> The investigator and/or RCO will consider factors such as the nature of the information the witness is believed to have to offer and the cost and time (delay) that would be incurred by in-person interview.

<sup>7</sup> The opportunity to comment generally will be done during an interview.

<sup>8</sup> For cases where the LDO is not serving as RCO.

<sup>9</sup> Generally, when parties request information, they are entitled only to the final investigation report at the completion of the investigation, which the University may redact to protect the privacy of personal and confidential information regarding all individuals, and are not entitled to other investigation-related records. Non-parties' rights to records are as provided in applicable laws.

## **VI. Related Information**

- UC Riverside Whistleblower Retaliation Complaint Form
- [University of California Whistleblower Protection Policy](#)
- [UCOP FAQs – Questions about protections from retaliation for being a whistleblower](#)
- [University of California Policy on Reporting and Investigating Allegations of Suspected Improper Governmental Activities](#) (Whistleblower Policy)

## **VII. Review and History**

This procedure was approved by the Chancellor in accordance with Section II(B)(1) of the WPP.

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