

THE UNIVERSITY OF
ARIZONA
TUCSON ARIZONA

Committee of Eleven

Faculty Center
1400 East Mabel
Tucson, Arizona 85721
(602) 621-1342
Fax (602) 621-8844

February 20, 1999

Memo to: Members of the Faculty Senate
From: Roger L. Caldwell, Chair, Committee of Eleven *rlc*
Subject: Background for Changes in our Faculty Grievance Procedures

In fall 1998 the Committee of Eleven began collecting information about improving our faculty grievance procedures. We had long heard concerns expressed about the process, including fairness, efficiency, legal accuracy, and ease of understanding its use.

We reviewed the current grievance process, read specific guidelines for each faculty grievance committee, and analyzed the number of grievance/ombudsman cases in recent years. We looked at processes in several peer universities and at Arizona State University and Northern Arizona University. We concluded it would be better to start over rather than to make substantial modifications to the existing procedures. We consulted with representatives of the several grievance/ombudsman committees and found general agreement with this approach.

We drafted a set of possible "guiding principles" to better understand the fundamental issues before delving into specific details. We summarized the current types of grievances and how the current grievance process works. These materials were then shared with current/previous chairs of committees dealing with grievance procedures, the Senate Executive Committee, the President's Cabinet, and selected administrative offices. We also received useful information from the Constitution and Bylaws Revision Committee, the University Attorney's Office, and the Office of Research Integrity (USDHHS).

The "guiding principles" were revised and discussed at a February meeting (25 present) of chairs of the various grievance committees, selected administrative offices, and others involved with grievance procedures. We also discussed possible next steps with those present. These included: 1) learn more about the ASU process and procedures, 2) begin more involvement by the various University of Arizona grievance-related committees and administrative offices, and 3) present the "guiding principles" to the Faculty Senate for general information and advice (with more formal discussions in fall 1999). The guiding principles were then revised and are printed on the back of this sheet (revision dated 2/20/99).

The ASU approach results in fewer formal grievance requests and is more understandable. Basically, they have a very strong informal process (ombudsperson) and a small "clearinghouse committee" that assigns formal grievance requests to the appropriate committee (e.g., CAFT, Conciliation, or EO/AAO). It has been in place for a number of years and was last revised in July 1998. The ASU Grievance Policies and Procedures for Faculty can be found at: <http://www.asu.edu/aad/manuals/acd/acd509-02.html>.

At the March 1 Faculty Senate meeting we will review the attached "guiding principles" to see if they address the basic issues related to how we should proceed. We will also discuss possible next steps in the process. Note: these discussions are intended to give us guidance rather than to review specific wording.

rlc

Instruction and Curriculum Policy Committee
For possible Faculty Senate action on March 1, 1999

Proposal to Change Name from The Honors Center to The Honors College.

Justification: ICPC found two strong arguments that support the proposed name change. Increased competitiveness for the best students is the most compelling. The competition for top students has increased both nationally and within the state. An honors college will be better able to compete for these students. Currently, Honors has college status at 40 universities, and the national trend is toward college status. Within the state, Arizona State University established an Honors College eight years ago. Many high school students believe that an Honors College serves them better than an Honors program. Increasing the profile of Honors education by establishing an honors college will emphasize the importance of Honors students to the academic mission of the University

The second argument to support this name change is the increased opportunities for scholarship development. Scholarship development is a key component of outreach, recruitment and retention efforts. An Honors college will be more appealing than an Honors program to donors who wish to support undergraduate scholarships. A dean over a college may find greater access to potential donors than a program director or a dean over a center.

Changes brought about by approval of this proposal:

1. Increased competitiveness for undergraduate scholars.
2. Increased competitiveness for scholarship funds.
3. Honors College Curriculum Committee composed of faculty to provide feedback to instructors on the Honors component of Honors courses. Course evaluations from honors courses would be reviewed periodically.
4. Faculty affiliation with Honors College will be formalized. A faculty committee will determine the criteria to be used and length of affiliation.
5. Honors college representation in faculty governance and university administration.

Changes not brought about by a name change:

1. New departments and faculty. Honors curriculum and advising will remain in academic departments.
2. New administrative structures. A Dean already administers the Honors Program. Staffing will not change.
3. New degrees/degree programs. No new degrees or degree programs are sought. Authority to grant degrees would need approval of the Faculty Senate.

Approvals: Undergraduate Council 12/8/98,
ICPC 12/8/98.

GRIEVANCE PROCESS: GUIDING PRINCIPLES -- DRAFT
UA Committee of Eleven – Version 2/20/99

1. The grievance procedures shall be available to any member of the General Faculty as defined in the Faculty Constitution.
2. The integrity of the grievance procedure must be maintained at all times and any appearance of influence over a committee's or panel's deliberations or decision-making must be avoided. Therefore, a committee or panel handling a grievance must be insulated from any institutional or other outside influences or communication. Any communication with the committee or hearing panel should not be *ex parte* (i.e., no one-party-only communication).
3. Any grievance process shall provide alternative dispute resolution mechanisms to try to resolve disputes and grievances before they evolve into formal charges and hearings; these alternatives are optional. Specific dispute resolution options may vary by the type of grievance, and these informal grievance processes are to be recommended where at all possible.
4. Grievance procedures and processes shall be as simple and straightforward as possible but guarantee the grievant and respondent their due process rights. These shall include, but not be limited to, the following:
 - a. The procedures shall be set out clearly and communicated in an understandable manner and shall provide for a fair and timely resolution of the grievance.
 - b. Any faculty inquiry or investigation should respect confidentiality, but it shall not be based on anonymous information or complaint, except in the very early stages of possible sexual harassment or research integrity cases. Beyond these very early stages, the complainant cannot remain confidential and shall be required to set out in detail his or her charges and the basis for the charges.
 - c. All formal inquiries or investigations conducted by a committee or panel shall conclude with a written report outlining in detail the findings of the inquiry or investigation and the recommendations of the committee or panel. Copies of the report shall be given to the grievant and respondent.
 - d. All relevant information and documents in the possession of either party shall be provided to the other in a timely manner.
 - e. A grievance hearing shall be closed to the public unless the accused requests it be open.
 - f. The grievant and respondent shall be allowed representation by legal counsel and advice during the process and at the hearing. However, the primary responsibility at the hearing for the presentation of witnesses, exhibits, and statements shall be on grievant and respondent. If the accused elects to proceed without counsel present at the hearing, the other party shall also proceed without counsel present. Either party may have the advice of counsel prior to the hearing.
 - g. In cases where the President makes the final decision, it is imperative that s/he remain neutral and independent until a recommendation is formally made to him/her. The decision by the President shall be made on the basis of material provided through the formal grievance process. If any additional material or information is presented to the President after the hearing process is completed, the material or information shall be provided to all parties and members of the hearing panel in order to give the parties an opportunity to comment or possibly reevaluate the additional material or information.
5. Investigative and adjudicative functions shall be separate and shall not be vested within the same committee.
6. All sanctions possible in a particular kind of case, up to and including dismissal, shall be clearly set out at the onset, in any grievance process
7. In matters involving dismissal of tenured faculty or to terminate non-tenured faculty during the contract term, the case may be appealed to the Board of Regents.

THE UNIVERSITY OF
ARIZONA®
TUCSON ARIZONA

Mailing Address:
Faculty Center
The University of Arizona
PO Box 210473
Tucson, AZ 85721-0473

Email: facsen@u.arizona.edu

Location:
Faculty Center
1400 E. Mabel St.
Tucson, AZ 85721-0473

Phone: (520) 621-1342
FAX: (520) 621-8844

February 22, 1999

To Faculty Senators:

The Academic Personnel Policy Committee has prepared a revised version of the University of Arizona Whistle-blower Draft Policy. This revised policy reflects a synthesis of comments received from Senators, suggestions from APPC members, advice from the UA Attorney's Office, consultation with the Staff Advisory Council and the Appointed Personnel Organization, and input in the form of draft whistle-blower policies from Arizona State University and Northern Arizona University. Copies of documents used by the Committee in revising this policy are on file and available for review at the Faculty Center. We bring this revised policy to the Faculty Senate as a seconded motion.

The documents provided in this packet are:

- (1) Letter from the three University Presidents to Representative Marilyn Jarrett (5/15/98)
- (2) Letter from Greg Fahey and Tom Thompson directing an early version of the Whistle-blower draft policy to several University groups (11/4/98)
- (3) Letter from President Likins adopting the Whistle-blower draft policy as an "Interim Policy" (2/12/99)
- (4) Pertinent Whistle-blower policy sections from U.H.A.P. (Sections 2.19 and 6.05)
- (5) Pertinent Whistle-blower policy sections from the Classified Staff Manual (Policy # 400.1)
- (6) **Revised draft (2/22/99) of the UA Whistle-blower Policy**
- (7) Whistle-blower Draft Policy Timelines (a brief summary) (2/22/99)
- (8) Excerpt from the Arizona State University Whistle-blower Policy DRAFT (2/15/99)
(idea for discussion and consideration)
Sections F, G, and H (describing 'request for hearing' and 'appointment of hearing officer')

Betty Atwater and Tim Troy, Co-Chairs
Academic Personnel Policy Committee

Attachments

May 15, 1998

The Honorable Marilyn Jarrett
Arizona House of Representatives
1700 W. Washington
Phoenix, AZ 85007

Dear Representative Jarrett:

We wish to make you aware of our thoughts regarding HB 2182, Whistle Blower Changes. As passed by the House, bill would permit Arizona public university employees who allege to be whistle blowers harmed by retaliation the right to take their grievance to the State Personnel Board. Such an outcome would violate the State Constitution inasmuch as case law supports the contention that employees of the Arizona Board of Regents cannot be subject to a separate personnel system. We would like to offer an alternative that provides for legislative tracking but eliminates the constitutional issues associated with this bill.

We understand the legislature's concern that employees of the universities be given the opportunity to appeal to a neutral party. Therefore, we propose the following:

The whistle blower policies at ASU, NAU and UA will be amended so that on receipt of a whistle blower complaint from an employee by the designated university officer, the complaint will be investigated by appropriate university officers or representatives. At the end of the investigation, the complainant will receive a written summary of the results of the investigation.

If the complainant is dissatisfied after the university issues its final decision, he or she may file a request for a hearing. The hearing will be conducted by an independent hearing officer, external to the university, chosen by mutual agreement of the complainant and university and paid by the university. The hearing officer will not be affiliated with the university. Following hearing, the hearing officer will provide a written decision to the parties and the president. The hearing officer's decision shall be subject to further review only under A.R.S. Section 12-901.

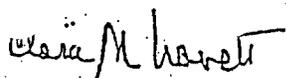
This new policy would apply to all whistle blower cases, except where a federal law or rule mandates an alternative procedure.

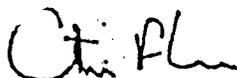
On a quarterly basis, we will provide to the legislature a summary of the number and types of whistle blower complaints that have been made at each university. (Since 1990, the university system has averaged fewer than four whistle blower complaints per year.)

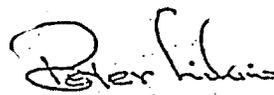
No legislation would be enacted. The changes indicated above would be accomplished by amendment to our universities' personnel policies within a reasonable period of time.

We hope this alternative to legislation meets with your approval.

Sincerely,


Clara Lovett
President, NAU


Lattie Coor
President, ASU


Peter Likins
President, UA

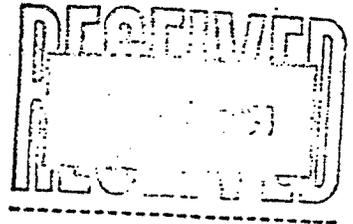
Associate Vice President
for State Relations

THE UNIVERSITY OF
ARIZONA
TUCSON ARIZONA

2

101 Administration Building
Tucson, Arizona 85721
(520) 621-1737
FAX (520) 621-3971

November 4, 1998



TO: Paul Sypherd, Senior Vice President, Academic Affairs and Provost
James Dalen, Vice President, Arizona Health Sciences
Saundra Taylor, Vice President, Campus Life
✓ Jerry Hogle, Faculty Chair
John Schwarz, Senior Faculty Associate to the President
Tom Davis, Chair, University Committee on Ethics and Commitment
Tricia Perkins, President, Staff Advisory Council
Fran Sherlock, President, Appointed Personnel Organization

FROM: Greg Fahey, Associate Vice President, State Relations
Tom Thompson, University Attorney

SUBJECT: Whistle-Blower Policy Revision

Attached hereto please find a revision to both the University Handbook for Appointed Personnel (UHAP) and the Classified Staff Policy Manual (CSPM) Whistle-blower Policies. Attached also please find a May 15, 1998 letter from the Presidents of the three Arizona Universities to the Arizona State Legislature. As you may recall, the Legislature at the time was considering a request from some University faculty members that University whistle-blower complaints proceed under the State Personnel Board.

The attached draft policy that is in semi-final form has been modified to make The University of Arizona policy comply with the commitments in the presidential letter. We ask that you provide any comments you have to either of our offices not later than December 1, 1998, so that the policy can be in effect prior to the beginning of the 1999 legislative session. If you have other questions or comments, please feel free to contact either of us.

TMT/GF/ce/gb

Attachments

February 12, 1999

MEMORANDUM

To: Deans, Directors and Department Heads
From: President Peter Likins *Peter Likins*
Subject: An Interim Whistleblower Policy

As you may know, University staff members and the Academic Personnel Policy Committee of the Faculty Senate have been cooperating in an effort to improve the University's Whistleblower Policy.

Even though the draft document still requires further detailed review, I have decided to adopt it without delay as an interim policy. In this way, I believe that we can best live up to our undertakings to the legislature and to the University community to make improvements. The University can enjoy the protection of a better policy even while thorough review continues.

A final version of the policy will not be adopted until there has been an opportunity for review by the Faculty Senate, the Appointed Personnel Organization and the Staff Advisory Council.

Please make this information available to the employees in your unit.

PL:cd

Attachment

cc: Faculty Senate
Appointed Personnel Organization
Staff Advisory Council



From University Handbook for Appointed Personnel (on-line)

CHAPTER 2: GENERAL POLICIES OF THE UNIVERSITY

2.19 PROTECTION OF EMPLOYEES FROM REPRISAL FOR THE DISCLOSURE OF INFORMATION

This policy is intended to protect any employee who engages in good-faith disclosure of alleged wrongful conduct to a public body or to a designated University official.

No adverse personnel action will be taken against a University of Arizona employee in knowing retaliation for a disclosure of information by the employee to a public body or to a designated University official, which information the employee reasonably believes evidences: (1) a violation of any law and/or (2) mismanagement involving either a gross waste of monies or an abuse of authority (items 1 and 2 are collectively referred to herein as "alleged wrongful conduct").

If an adverse personnel action is taken against a University employee in knowing retaliation for his or her good faith disclosure of information to a public body or to a designated University official concerning alleged wrongful conduct, and if the employee's conduct or performance did not warrant that action, then the adverse personnel action will be reversed.

Any supervisory employee who is found to have knowingly retaliated for disclosure of alleged wrongful conduct to a public body or to a designated University official shall be subject to discipline, up to and including termination, in accordance with existing University rules, policies and procedures.

For purposes of this policy the following definitions will be used:

Public body is defined as the Arizona Attorney General, the Arizona Legislature, the Governor of Arizona, or a federal, state or local law enforcement agency.

A designated University official is defined as The University of Arizona Provost, except when that official is implicated in the complaint, in which event the designated official will be The University of Arizona President.

Adverse personnel action is defined as one of the following:

- termination of employment
- demotion with salary reduction
- imposition of suspension without pay
- issuance of written reprimand
- decision not to promote
- decision not to grant tenure
- decision not to grant continuing status
- unsatisfactory overall performance rating
- withholding of appropriate salary adjustments
- elimination of the employee's position absent a reduction in force, reorganization, or by reason of insufficient funding, monies or workload

Knowing retaliation means that the supervisory employee was substantially motivated in the adverse personnel action by his or her knowledge or belief that the employee made a good faith disclosure of alleged wrongful conduct to a public body or to a designated University official.

Supervisory employee is defined as any supervisor, director, chair, dean, department head or other employee who has control over personnel actions.

In order to permit the University an opportunity to review allegations of wrongful conduct and take necessary action as appropriate, appointed personnel are encouraged to make such allegations to the Provost.

This policy may not be used as a defense by an employee against whom an adverse personnel action has been taken for legitimate reasons or cause under University rules and policies. It shall not be a violation of this policy to take adverse personnel action against an employee whose conduct or performance warrants that action. If a supervisory employee proves to the satisfaction of the body investigating and considering a claim of "knowing retaliation" that he/she would have taken the adverse personnel action for legitimate reasons or cause, under University rules and policies, even if the disclosure of information had not occurred, then the supervisory employee shall not be disciplined under this policy, and the fact of disclosure shall not alter the adverse action.

Any University employee who knowingly makes false allegations of alleged wrongful conduct to a public body shall be subject to discipline, up to and including termination of employment, in accordance with University policies and procedures.

An employee who believes he or she has been subjected to an adverse personnel action based on prior good faith disclosure of alleged wrongful conduct may protest the action and have a claim of retaliation investigated and considered in accordance with existing University grievance procedures. Such procedures, and the applicable time-frames, are outlined in Chapter 6, Section 6.02.

CHAPTER 6: GRIEVANCES AND HEARINGS

6.02 GENERAL ADMINISTRATIVE PROCEDURES

All grievances or complaints by or against appointed personnel shall be filed with and addressed first by the immediate administrative head of the individual about whom the grievance or complaint is made. All grievances or complaints shall be filed in writing no later than 90 days from the date on which the grievant or complainant becomes aware of the matter which gives rise to the grievance or complaint, except for compensation.

Grievances or complaints regarding compensation shall be filed no later than 30 days from the date the grievant or complainant receives notice of the matter which gives rise to the grievance or complaint.

The administrative head shall review the grievance or complaint and develop any factual information required for a decision on the matter. The administrator may consult with standing committees or appoint a special committee or an individual to investigate the matter. The administrator shall communicate his or her decision in writing to the grieving or complaining party and to the party against whom the grievance or complaint is made, stating the factual basis and reasons for the decision.

Within 10 days after receipt of the administrator's decision, the grieving or complaining party may appeal the decision to the next administrative level. Additional factual development may be undertaken at the next administrative level if deemed necessary. The decision at that next administrative level is not subject to further administrative review except as otherwise provided in this chapter.

6.05 PROTECTION OF EMPLOYEES FROM REPRISAL FOR THE DISCLOSURE OF INFORMATION - REVIEW PROCEDURE

If the grievance or complaint has not been resolved through the Provost's investigation, the individual may file a petition with the Committee on Academic Freedom and Tenure. The rules and procedures contained in the Constitution and By-laws of the General Faculty of The University of Arizona govern the jurisdiction and proceedings of this committee and may be obtained from the Chairman of the Faculty or the chairperson of the committee. Any recommendation by the Committee on Academic Freedom and Tenure to the President shall be advisory. The decision of the President shall be final and is not subject to further review.



Classified Staff Human Resources Policy and Procedures

⑤

Policy # 400.1
Effective: 11/89
Revised: 1/97
Section: Employee Relations
Subject: Whistle-Blower Policy
Reference: Arizona Revised Statute Sections 38-531, 38-532, 38-533

POLICY

This policy is intended to protect any employee who engages in good-faith disclosure of alleged wrongful conduct to a public body or to a designated University official.

No adverse personnel action will be taken by a supervisory employee against a University of Arizona classified staff employee in knowing retaliation for a disclosure of information by the employee to a public body or to a designated University official, which information the employee reasonably believes evidences: 1) a violation of any law and/or 2) mismanagement involving either a gross waste of monies or an abuse of authority. Items "1)" and "2)" are collectively referred to herein as "alleged wrongful conduct."

If adverse personnel action is taken against a University employee in knowing retaliation for his or her good faith disclosure of information to a public body or to a designated University official concerning alleged wrongful conduct, and if the employee's conduct or performance did not warrant that action, then the adverse personnel action will be reversed.

Any supervisory employee who is found to have knowingly retaliated for disclosure of alleged wrongful conduct to a public body or to a designated University official shall be subject to discipline, up to and including discharge, in accordance with existing University rules, policies and procedures.

DEFINITIONS

Public body is defined as the Arizona Attorney General, the Arizona Legislature, the Governor of Arizona, or a federal, state or local law enforcement agency.

A designated University official is defined as The University of Arizona Provost, except when that official is implicated in the complaint, in which event the designated official will be The University of Arizona President.

Adverse personnel action is defined as one of the following:

- unsatisfactory overall performance appraisal rating
- issuance of a written warning
- imposition of disciplinary probation
- imposition of suspension without pay
- termination of employment
- demotion with salary reduction
- withholding of appropriate salary adjustments
- involuntary transfer or reassignment
- elimination of the employee's position absent a reduction in force, reorganization, or by reason of insufficient funding or workload.

Knowing retaliation means that the supervisory employee was substantially motivated in the adverse personnel action by his or her knowledge or belief that the employee made a good faith disclosure of alleged wrongful conduct to a public body or to a designated University official.

Supervisory employee is defined as any supervisor, director, chair, dean, department head or other employee who has control over personnel actions, including disciplinary actions.

GENERAL

In order to permit the University an opportunity to review allegations of wrongful conduct and take necessary action as appropriate, classified staff employees are encouraged to make such allegations to the Provost.

This policy may not be used as a defense by an employee against whom an adverse personnel action has been taken for legitimate reasons under University rules and policies. It shall not be a violation of this policy to take an adverse personnel action against an employee whose conduct or performance warrants that action. If a supervisory employee proves to the satisfaction of the body investigating and considering a claim of "knowing retaliation" that he or she would have taken the adverse personnel action for legitimate reasons under University rules and policies even if the disclosure of information had not occurred, then the supervisory employee shall not be disciplined under this policy, and the fact of disclosure shall not alter the adverse action.

Any University of Arizona classified staff employee who knowingly makes false allegations of alleged wrongful conduct to a public body shall be subject to discipline, up to and including discharge, in accordance with University policies and procedures.

An employee who believes he or she has been subjected to an adverse personnel action based on prior disclosure of alleged wrongful conduct may protest the action and have a claim of retaliation investigated and considered in accordance with the provisions of, and the time frames established in, the Staff Dispute Resolution Procedure, Policy #406.0 herein.



[Table of Contents](#)



[Top of Page](#)

University of Arizona, Human Resources Organization

WHISTLE-BLOWER POLICY

PURPOSE

This policy is intended to protect any employee who engages in good-faith disclosure of alleged wrongful conduct to a public body or to a designated University ~~official~~ OFFICER.

SOURCES

Arizona Revised Statutes §§ 38-531 through 533.

University policy.

APPLICABILITY

THIS POLICY APPLIES TO all faculty, academic professionals, administrators, ~~and~~ classified staff, OR ANY OTHER INDIVIDUAL WHO HAS AN EMPLOYER-EMPLOYEE RELATIONSHIP WITH THE UNIVERSITY, IRRESPECTIVE OF HOW CATEGORIZED, who disclose alleged wrongful conduct, as defined in this policy, and who, as a result of the disclosure, are subject to an adverse personnel action, and the supervisors of those employees.

POLICY

No adverse personnel action will be taken against a University employee in knowing retaliation for a disclosure of information by the employee to a public body or to a designated University ~~official~~ OFFICER, which information the employee reasonably believes evidences: (1) a violation of any law, or (2) mismanagement involving a gross waste of monies, or (3) an abuse of authority (items 1, 2 and 3 are collectively referred to herein as "alleged wrongful conduct").

If an adverse personnel action is taken against a University employee in knowing retaliation for his or her good faith disclosure of information to a public body or to a designated University ~~official~~ OFFICER concerning alleged wrongful conduct, and if the employee's conduct or performance did not warrant that action, then the adverse personnel action will be reversed.

Any supervisory employee who is found to have knowingly retaliated for disclosure of alleged wrongful conduct to a public body or to a designated University ~~official~~ OFFICER shall be subject to discipline, up to and including termination, in accordance with existing University rules, policies and procedures.

In order to permit the University an opportunity to review allegations of wrongful conduct and take necessary action as appropriate, all personnel are encouraged to make such allegations to ~~the A University Provost~~ OFFICER.

DEFINITIONS

Adverse Personnel Action:

Adverse personnel action is defined as one of the following:

- a. termination of employment.
- b. demotion with salary reduction.
- c. imposition of suspension without pay.
- d. issuance of written reprimand.
- e. decision not to promote.
- f. decision not to grant tenure.
- g. decision not to grant continuing status.
- h. unsatisfactory overall performance rating.
- i. withholding of appropriate salary adjustments.
- j. elimination of the employee's position absent a reduction in force, reorganization, or insufficient funding, monies or workload.
- k. other significant change in duties, ~~or~~ responsibilities, RESOURCES, GRADE LEVEL, OR SALARY. ~~which is inconsistent with the employee's salary or grade level.~~

Alleged Wrongful Conduct:

- a. Violation of the law, meaning a violation of a federal or Arizona state law (statute);
- b. Mismanagement/gross waste of public funds, meaning action or decision which is outside the scope of the alleged violator's job description, scope of duties, or level of authority as authorized by job description or delegated by the University president or designee BUDGETARY AUTHORITY, OR IF THE ACTION OR DECISION WAS WITHIN BUDGETARY AUTHORITY, THE ACTION WOULD BE CONSIDERED BY A REASONABLE PERSON TO BE GROSSLY EXCESSIVE OR WASTEFUL OF PUBLIC FUNDS;
- c. Abuse of authority, meaning action or decision which is outside the scope of the alleged violator's job description, scope of duties or level of authority as authorized by the job description or delegated by the president or designee.

Day:

Day is defined as a calendar day excluding Saturdays, Sundays, holidays, and University vacation periods. In cases of faculty and other employees appointed on an academic year (nine-month) basis, day does not include summer, semester, or other similar academic break periods.

DISCLOSER:

A DISCLOSER IS AN EMPLOYEE WHO REPORTS ALLEGED WRONGFUL CONDUCT TO A PUBLIC BODY, AS DEFINED HEREIN.

Disclosure:

Disclosure means a written report by an employee to a public body, including a University officer, of alleged wrongful conduct, as defined above.

Disclosure Investigation:

Disclosure investigation means review and determination made by the University officer or designees of a disclosure made by an employee.

Filing:

Filing under this policy shall mean actual received RECEIPT by the office where the filing is required.

Knowing Retaliation:

Knowing retaliation means that, IN TAKING ADVERSE PERSONNEL ACTION, the supervisory employee was ~~substantially~~ motivated, IN WHOLE OR IN PART, ~~in the adverse personnel action~~ by his or her knowledge or belief that the employee made a good faith disclosure of alleged wrongful conduct to a public body or to a designated University ~~official~~ OFFICER.

Personnel Action:

An employment-related act or decision which impacts an employee positively or negatively.

Public Body:

~~The Arizona Attorney General; the Arizona Legislature; the Governor of Arizona; a federal, state, or local law enforcement agency; or University Provost or Vice Provost.~~

MEMBERS OF THE ARIZONA LEGISLATURE; A MEMBER OF THE ARIZONA BOARD OF REGENTS; OR OFFICES OF THE ARIZONA ATTORNEY GENERAL, THE GOVERNOR OF ARIZONA, A FEDERAL, STATE, OR LOCAL LAW ENFORCEMENT AGENCY, OR THE UNIVERSITY PRESIDENT, PROVOST, VICE-PROVOST, OR A VICE-PRESIDENT.

Service Provider:

Individuals or entities qualified by education and experience to administer and conduct whistle-blower hearings, using an independent hearing officer. The service provider has a contractual obligation to provide a neutral and independent hearing officer for whistle-blower hearings. THE HEARING OFFICER SHALL BE CHOSEN BY MUTUAL AGREEMENT BETWEEN THE UNIVERSITY AND THE COMPLAINANT.

Supervisory Employee:

~~Supervisory employee is defined as~~ Any supervisor, director, chair, dean, department head, or other employee who has DIRECT OR INDIRECT control over personnel actions.

Time Limits:

~~A time limit shall be calculated according to calendar days, including Saturdays, Sundays and legal holidays unless the last day of the period falls on a Saturday, Sunday or legal holiday, in which case the end of the period shall be the next day which is not a Saturday, Sunday or legal holiday.~~ ***(Move the following to page 8, Conduct of Hearing)*** The hearing officer may at any time lengthen or shorten the time for any action to be taken. The hearing officer may also direct that matters connected with the hearing of the matter, whether by formal or informal hearing, be completed within a prescribed time. Such authority shall extend to actions to be taken by the hearing officer within a prescribed time so long as the hearing officer makes a written record of the reasons for extending such time.

University Officer:

~~Provost, Vice Provost.~~ UNIVERSITY OF ARIZONA PRESIDENT, PROVOST, VICE-PROVOST, OR A VICE-PRESIDENT.

Whistle-blower/Complainant:

"Complainant": A current or former employee (1) who disclosed alleged wrongful conduct (a violation of the law, or mismanagement/gross waste of public funds, or an abuse of authority) to a public body, and (2) who subsequently is subject to an adverse personnel action as a result of making the prior disclosure.

Whistle-blower Complaint:

A written complaint filed by a complainant with a University officer alleging that an adverse personnel action was taken in ~~reprisal~~ KNOWING RETALIATION for his or her prior disclosure of alleged wrongful conduct to a public body.

Whistle-blower Complaint Review:

A review by a University officer of a whistle-blower complaint, resulting in a WRITTEN decision which the University OFFICER provides to the complainant.

Whistle-blower External Hearing:

A hearing conducted by an external hearing officer approved by the complainant and University to conduct a hearing if the complainant is dissatisfied with the decision of the University officer following a whistle-blower complaint review. The hearing shall include both parties and shall be conducted in accordance with these rules and applicable procedural rules ~~from Chapter 6 of this manual (§ 6.02)~~ OF THE UNIVERSITY.

MAKING A DISCLOSURE

ANY EMPLOYEE MAY MAKE A DISCLOSURE TO ANY PUBLIC BODY AS DEFINED HEREIN. In order to allow the University an opportunity to review alleged wrongful conduct and to take necessary corrective action, employees should report ~~verbally or~~ in writing a disclosure of alleged wrongful conduct (see definition above), to ~~the Provost~~ A UNIVERSITY OFFICER so that ~~an~~ A UNIVERSITY investigation may commence. DISCLOSURES MADE TO A PUBLIC BODY OTHER THAN TO A DESIGNATED UNIVERSITY OFFICER MUST BE COPIED TO A UNIVERSITY OFFICER TO ASSURE COMPLIANCE WITH THIS POLICY. The ~~Provost~~ UNIVERSITY OFFICER or designees will ~~reduce the allegation to writing and~~ conduct an investigation into the allegations of the disclosure and will take any necessary corrective action. At the conclusion of the investigation, the ~~Provost~~ UNIVERSITY OFFICER will notify the ~~employee who made the disclosure~~ DISCLOSER and other affected employees in writing of the ~~determination~~ RESULTS OF THE INVESTIGATION AND THE DECISION REACHED and retain a copy. A disclosure and disclosure investigation is not a whistle-blower complaint or review. A discloser must suffer adverse personnel action after and as a result of making disclosure to be ~~considered a whistle-blower~~ COVERED UNDER THIS POLICY.

FALSE ALLEGATIONS OF WRONGFUL CONDUCT

Any University employee who knowingly makes false allegations of alleged wrongful conduct to a public body shall be subject to discipline, up to and including termination of employment, in accordance with University rules, policies, and procedures.

LEGITIMATE EMPLOYMENT ACTION

This policy may not be used as a defense by an employee against whom an adverse personnel action has been taken for legitimate reasons or cause under University rules and policies. It shall not be a violation of this policy to take adverse personnel action against an employee whose conduct or performance warrants that action. If a supervisory employee proves to the satisfaction of the body investigating and considering a claim of "knowing retaliation" that the adverse personnel action was taken for legitimate reasons or cause, under University rules and policies, irrespective of the disclosure of information, then the supervisory employee shall not be disciplined under this policy, and the fact of disclosure shall not alter the adverse action.

WHISTLE-BLOWER COMPLAINT

An employee who has been subjected to an adverse personnel action based on his or her prior disclosure of alleged wrongful conduct may protest the action by filing a written whistle-blower complaint with a University officer. The University officer or designee, on receipt of a whistle-blower complaint, will review the complaint expeditiously to determine: (1) whether the complainant reported alleged wrongful conduct to a public body before an adverse action was imposed; (2) whether the complainant suffered an adverse personnel action after reporting alleged wrongful conduct to a public body; (3) whether the complainant alleges that the adverse action resulted from the prior disclosure; and (4) whether the adverse personnel action was the result of knowing retaliation for the employee's disclosure. Within thirty (30) days after receipt of the

complaint, the University officer will notify the complainant IN WRITING of the results of the review and whether the adverse personnel action is affirmed, reversed, or modified, with a copy of the decision to the employee's supervisor. The supervisor will implement the decision within seven (7) days of AFTER receipt OF THE UNIVERSITY OFFICER'S DECISION.

WHISTLE-BLOWER HEARING

A complainant who is dissatisfied with the decision of the University officer on the whistle-blower complaint may file a request for a whistle-blower hearing and proceed under the following procedures. AN EMPLOYEE WHO HAS EVOKED THIS POLICY MAY NOT ALSO UTILIZE, OR HAVE UTILIZED, ANY OTHER UNIVERSITY POLICY OR PROCEDURE WITH REGARD TO THE SAME FACTS, SET OF CIRCUMSTANCES, OR PERSONNEL ACTIONS.

WHISTLE-BLOWER HEARING PROCEDURES

The University has contracted with A qualified external service providers (currently the American Arbitration Association) to provide QUALIFIED EXTERNAL hearing officers and a hearing process for a complainant who is dissatisfied with the University officer's decision. The purpose of the hearing is to determine whether adverse personnel action resulted from the complainant's prior disclosure of alleged wrongful conduct. NO OTHER ISSUES OR DETERMINATIONS ARE AUTHORIZED OR APPROPRIATE. The hearing officer cannot be a University employee and, except for the contractual arrangement to provide hearing officer services, cannot have a substantial interest in the University. THE HEARING OFFICER SHALL BE CHOSEN BY MUTUAL AGREEMENT BETWEEN THE UNIVERSITY AND THE COMPLAINANT. This step is the final stage of the University administrative procedure for whistle-blower complaints. No suit, claim, or judicial review may be brought alleging violation of the whistle-blower policy until this step has been completed.

Request for Hearing

An employee dissatisfied with the determination of the University of that employee's allegation of an adverse personnel action as the result of the employee's disclosure of alleged violations must file a written request for review A HEARING by AN independent hearing officer with the University's Office of Human Resources within fifteen (15) days of the date of the mailing to the employee of the University decision.

Failure to timely file a request for review A HEARING with Human Resources deprives the independent hearing officer of jurisdiction to hear the matter and renders the prior decision the final administrative decision of the University.

Contents of Request for Hearing

A request for A hearing must contain the following:

- a. A specific statement requesting a whistle-blower hearing by an external hearing officer.

- b. The name, work address, work telephone number and position of the complainant.
- c. The name, work address, work telephone number, and position of the involved University officer who issued a decision on the complainant's whistle-blower complaint.
- d. ~~A copy of the University officer's decision which forms the basis for the request for hearing.~~ COPIES OF (1) THE EMPLOYEE'S PRIOR DISCLOSURE; (2) RESULTS OF THE DISCLOSURE INVESTIGATION, AND (3) THE UNIVERSITY OFFICER'S DECISION ON THE WHISTLE-BLOWER COMPLAINT.
- e. A statement of the reasons for requesting a hearing including the objectionable portion of the University officer's decision.
- f. A brief statement of the reasons the decision to be reviewed is believed to be legally or factually incorrect.
- g. A statement of the specific relief or remedy requested.

Appointment of Hearing Officer

Within twenty (20) days of the filing of a request for review A HEARING by an independent hearing officer, the University Human Resources department shall:

- a. Acknowledge receipt of the request to the person requesting review A HEARING.
- b. Notify the appropriate University ~~official~~ OFFICER or administrator of the receipt of a request for review A HEARING by an independent hearing officer and provide ~~that individual~~ THE UNIVERSITY OFFICER with a copy of the same HEARING REQUEST.
- c. ~~Notify the individual or entity providing the University with independent hearing officer services of the necessity for the appointment of a hearing officer~~ SERVICE PROVIDER TO BEGIN THE PROCESS OF SELECTING AN EXTERNAL HEARING OFFICER AND CONDUCTING A WHISTLE-BLOWER HEARING.
- d. ~~Select or arrange for the selection of a hearing officer as may be appropriate under the University contract with the service provider. The hearing officer shall be chosen by mutual agreement between the University and the complainant.~~
- e. ~~Upon the selection or appointment of the hearing officer, notify or arrange for the notification of the hearing officer, the complainant and the appropriate University official~~ OFFICER of the name, address, and telephone number of the hearing officer selected or appointed.

(Move part of this paragraph to the next section.) ~~After performance of the foregoing specific duties or obligations, the University Human Resources department shall provide the staffing, office space, communications services, and other necessary support services and facilities such that the hearing may be promptly and smoothly conducted. While Human Resources should~~

~~make every effort to accommodate reasonable requests by the hearing officer and parties to the hearing, Human Resources retains final discretion as to the amount, kind and quantity of resources to be devoted to any single hearing or to the overall process.~~

Submission of the Record

Within THIS SAME twenty (20) days ~~after receipt~~ OF THE FILING of the request for A hearing, the service provider shall notify THE UNIVERSITY HUMAN RESOURCES DEPARTMENT, the complainant and the identified University officer that the request for A hearing is accepted and assist the parties with the mutual selection of the hearing officer, the procedures for a pre-hearing conference in person or by telephone, and the procedures which will be followed in conducting the hearing, including submission of evidence, documents and witness lists. The hearing officer may require the parties to submit summaries of their positions before the hearing commences.

(Paragraph content taken from the previous section.) THE UNIVERSITY HUMAN RESOURCES DEPARTMENT SHALL BE AVAILABLE TO PROVIDE THE STAFFING, OFFICE SPACE, COMMUNICATION SERVICES, AND OTHER NECESSARY SUPPORT SERVICES AND FACILITIES SUCH THAT THE HEARING MAY BE PROMPTLY AND SMOOTHLY CONDUCTED. WHILE HUMAN RESOURCES SHOULD MAKE EVERY EFFORT TO ACCOMMODATE REASONABLE REQUESTS BY THE HEARING OFFICER AND PARTIES TO THE HEARING, HUMAN RESOURCES RETAINS FINAL DISCRETION AS TO THE AMOUNT, KIND AND QUANTITY OF RESOURCES TO BE DEVOTED TO ANY SINGLE HEARING OR TO THE OVERALL PROCESS.

(Move this sentence to the following section.) ~~The hearing will be conducted within ninety (90) days after the request is received by the service provider, unless the hearing officer extends the time for good cause.~~

Conduct of Hearing

Hearings before the hearing officer shall be conducted according to this policy and the rules and procedures of the service provider. The procedures designated in this policy supersede the rules of the service provider, if there is a conflict. The formal rules of procedures or evidence do not govern the hearing. Generally, the party advocating a particular point or fact has the burden of proof on that point or fact. Generally, the person seeking review has the burden of persuading the hearing officer that the adverse action was based on a prior disclosure of alleged wrongful conduct to a public body.

(Sentence moved from previous section.) THE HEARING WILL BE CONDUCTED WITHIN NINETY (90) DAYS AFTER THE REQUEST IS RECEIVED BY THE SERVICE PROVIDER, UNLESS THE HEARING OFFICER EXTENDS THE TIME FOR GOOD CAUSE.

(Paragraph content taken from definition of 'Time Limits'.) THE HEARING OFFICER MAY AT ANY TIME LENGTHEN OR SHORTEN THE TIME FOR ANY ACTION TO BE TAKEN. THE HEARING OFFICER MAY ALSO DIRECT THAT MATTERS CONNECTED

WITH THE HEARING OF THE MATTER, WHETHER BY FORMAL OR INFORMAL HEARING, BE COMPLETED WITHIN A PRESCRIBED TIME. SUCH AUTHORITY SHALL EXTEND TO ACTIONS TO BE TAKEN BY THE HEARING OFFICER WITHIN A PRESCRIBED TIME SO LONG AS THE HEARING OFFICER MAKES A WRITTEN RECORD OF THE REASONS FOR EXTENDING SUCH TIME.

The hearing shall be recorded or transcribed AT THE UNIVERSITY'S EXPENSE by such means as will result in an accurate, written rendition of the hearing.

Attorneys or Advisers

Either party may have present and be advised by an attorney or an adviser before the hearing, at the hearing, or both. However, the attorney or adviser may not participate directly in the hearing and may only advise the individual or party in such a manner as to not disrupt or unduly delay the hearing. If the complainant will not be accompanied by an ATTORNEY OR AN adviser at the hearing, the University representative will also participate without an ATTORNEY OR AN adviser at the hearing.

Resolution by Agreement

At any time after the appointment of an independent hearing officer, the parties may agree upon a resolution of the matter. In such event, the agreement shall be presented in writing to the hearing officer who shall dismiss the matter and notify the service provider, the parties, and the president in writing that the matter is "resolved by agreement."

Hearing Officer's Decision

Within thirty (30) days after the close of the hearing, the hearing officer or service provider will provide a written report to the parties and to the University President. The report will contain findings of fact and the evidence relied upon to sustain those facts, conclusions including reference to applicable law, rules or policies, and a decision by the hearing officer that the adverse personnel action is ~~affirmed, reversed, or modified~~ WAS OR WAS NOT BASED ON A PRIOR DISCLOSURE. The University will implement the decision of the hearing officer within ten (10) days after receipt, except that the hearing officer may not direct that the University grant RENEWAL, tenure, CONTINUING STATUS, OR PROMOTION at the University to an individual. If the hearing officer finds that ~~tenure or continuing status has been denied~~ ANY OF THESE PERSONNEL ACTIONS WERE TAKEN as the direct result of the disclosure of alleged wrongful conduct, ~~he~~ THE HEARING OFFICER shall direct that the application be reconsidered by the appropriate University faculty bodies and acted upon without regard to the disclosure.

The hearing officer's decision AND SUBSEQUENT ACTIONS OF THE UNIVERSITY ARE ~~is~~ subject to judicial review ~~only under A.R.S. § 12-901~~ AS PROVIDED BY ARIZONA LAW.

UA WHISTLE-BLOWER POLICY

Timelines (brief summary)

Action	Time Period
<p>Whistle-blower Complaint of knowing retaliation filed with University officer</p>	<p>Review takes place within 30 days after receipt of complaint. University officer notifies complainant in writing of results of review and the decision. Supervisor will implement decision within 7 days</p>
<p>Request for Whistle-blower Hearing (if complainant is dissatisfied with decision of University officer)</p>	<p>File written request for a hearing by independent hearing officer with Office of Human Resources within 15 days of University decision.</p>
<p>Appointment of Hearing Officer</p>	<p>Office of Human Resources notifies involved parties and notifies service provider to contact parties to select a hearing officer within 20 days of the filing of the request for a hearing.</p>
<p>Whistle-blower Hearing by independent, external Hearing Officer</p>	<p>The hearing shall be conducted within 90 days after the request for the hearing was received by the service provider.</p>
<p>Hearing Officer's Decision</p>	<p>Hearing officer or service provider sends written report to both parties and the University President within 30 days after the close of the hearing.</p>
<p>Implementation of the Decision of the Hearing Officer</p>	<p>Decision will be implemented by the University within 10 days after its receipt.</p>
<p>Judicial review</p>	<p>Pursuant to Arizona law</p>

WHISTLE-BLOWER POLICY
(Excerpts)

SECTIONS F, G, AND H

F. WHISTLE-BLOWER HEARING

A complainant who is dissatisfied with the decision of the university officer on the whistle-blower complaint may file a request for a whistle-blower hearing and proceed under the following procedures.

G. REQUEST FOR HEARING

ASU has contracted with a qualified service provider to provide qualified external hearing officers and a hearing process for a complainant who is dissatisfied with the university officer's decision. The purpose of the hearing is to determine whether an adverse personnel action resulted from the complainant's prior disclosure of alleged wrongful conduct. The hearing officer cannot be a university employee and, except for the contractual arrangement to provide hearing officer services, cannot have substantial interest in the university. This step is the final step of the University administrative procedure for whistle-blower complaints.

1. Request for a hearing

Within 15 days after receipt of the university officer's decision, a complainant who is dissatisfied and desires an external hearing, must file a written request for hearing through one of the following processes:

- a. a faculty or academic professional complainant must file the request with the Clearinghouse Committee of the Academic Senate (CHC) at Main campus; or the appropriate academic grievance committees at West or East campuses;
- b. an administrator or administrative staff member, service professional or classified staff member must file with the designated campus Human Resources Department (HR)

2. Contents of Request for Hearing

A request for hearing must contain the following:

- a. A specific statement that it is a request for a whistle-blower hearing by an external hearing officer.

- b. For a current employee: the name, work address, work telephone number and position of the complainant; for a former employee, the current work or home telephone number and home or work address.
- c. The name, work address, work telephone number and position of the university officer who issued a decision on the complainant's whistle-blower complaint.
- d. A statement of the reasons for requesting a hearing including the objectionable portion of the university officer's decision.
- e. A statement of the specific relief or remedy requested.
- f. Copies of 1) the employee's prior disclosure; 2) results of disclosure investigation and 3) the university officer's decision on the whistle-blower complaint.

H. APPOINTMENT OF HEARING OFFICER

Within 20 days after receipt of a request for hearing, the academic committee or Human Resources representative (HR), depending on the position of the complainant, will determine whether the complainant qualifies for an external hearing based on the following:

- 1. the complaint identified an adverse personnel action imposed on him or her and the date of notice of the action;
- 2. the complainant made a prior disclosure of alleged wrongful conduct to a public body as defined herein, prior to the adverse personnel action;
- 3. the complainant alleges the adverse personnel action resulted from the prior disclosure;
- 4. the complainant attached the disclosure, and the decision on the whistle-blower complaint review to the request for hearing.

If the request qualifies for an external hearing, the committee or HR will forward the request to the service provider to begin the process of selecting an external hearing officer and conducting a whistle-blower hearing.

If the request does not qualify for a whistle-blower hearing, the request will be returned to the complainant with written reasons for rejection.