

## **PROCEDURE 326-PR1**

### **Whistleblower Retaliation Grievance**

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Associated Policy: 326 Reporting Improper Conduct and Retaliation

Effective Date: Pending

Latest Revision:

Category: Personnel Policies, General

#### **PURPOSE**

This procedure implements the specific requirements for filing a complaint of retaliation under the Utah Protections of Public Employees Act (UPPEA), and USU Policy 326, "Reporting Improper Conduct and Retaliation." This Procedure applies to complaints of Retaliatory Action based on an Employee's Good Faith report of Improper Conduct or other activities protected by USU Policy 326. Processes addressing other types of retaliation are addressed in other policies and regulations, such as USU Policies [305: Discrimination based on Protected Characteristics](#) and [339: Title IX Sexual Misconduct in an Employment or Education Program or Activity](#) and [USU's Research Misconduct Procedures](#).

All provisions set forth in USU Policy 326 are incorporated to this Procedure. All terms used in this procedure shall have the same meaning defined by USU Policy 326.

#### **PROCEDURES**

##### **A. Specific Requirements for Reports of Retaliatory Actions**

An Employee who believes that USU (namely, a Supervisory Employee on the University's behalf) has taken a prohibited Retaliatory Action against them for engaging in activity protected by USU Policy 326 may file a written Complaint with USU Legal Affairs by using USU's [ethics reporting form](#).

The report must include all relevant information available to the reporting employee that supports the allegations raised in the complaint of Retaliation, including the date, time, and location of the alleged Retaliatory Action, the individual(s) involved and/or responsible, the nature of the complaint, and the desired remedy.

A Complaint must be filed no later than sixty (60) calendar days after the alleged Retaliatory Action. Filing of a Complaint after the established sixty (60) calendar day deadline may result in the immediate dismissal of the Complaint.

##### **B. Administrative Leave**

Consistent with existing practices, the supervisor of the individual alleged to have engaged in Retaliatory Action, in cooperation with Human Resources, will evaluate whether administrative leave/suspension with pay is necessary to stop or prevent retaliation or to protect the complaint resolution process described in these procedures.

##### **C. Formation of Independent Personnel Board**

Upon receipt of a timely filed Retaliation Complaint, the USU Office of Legal Affairs shall, within five (5) calendar days, empanel an Independent Personnel Board.

The Independent Personnel Board will be comprised of three (3) individuals and will not include:

1. individuals in the same department as the Complaining Party,
2. the Complaining Party's supervisor, or
3. an individual who has a conflict of interest related to the Complaining Employee, the Responding Supervisor, or the subject matter of the Complaint.

#### D. Notice to Parties

Upon empanelment of the Independent Personnel Board, the USU Office of Legal Affairs shall provide notice to the Complaining Employee and the Responding Supervisor (collectively, the "Parties") that a Complaint has been received according to this procedure. This notice shall include the names and identities of the individuals empaneled to the Independent Personnel Board and will include a copy of USU Policy 326, this procedure, and the Utah Protection of Public Employees Act.

#### E. Objections to the Independent Personnel Board

The Parties may, within five (5) calendar days, submit a written objection related to the makeup and statutory definition of the Independent Personnel Board. Failure to submit a timely objection will be construed as a waiver of such right.

If a member of the Independent Personnel Board is disqualified after an objection, the Independent Personnel Board will proceed with the remaining members available. If, however, fewer than two (2) members remain, the USU Office of Legal Affairs may appoint additional member(s) consistent with Section C of this procedure.

#### F. Dismissal for Lack of Jurisdiction

If the Responding Supervisor believes the Employee's Complaint does not plausibly establish that they 1) were in fact a Complaining Party, and 2) suffered a Retaliatory Action, the Responding Party may challenge the Employee's claim in a written submission to the Independent Personnel Board before the commencement of review process. If the Independent Personnel Board finds by substantial evidence that the Employee has not stated a plausible claim, the Independent Personnel Board may dismiss the Complaint without further review.

Alternatively, if the Independent Personnel Board finds that the complaint is not supported, either because the complainant does not qualify as a Complaining Party or because the action taken against the complainant does not qualify as a Retaliatory Action, but that the complainant may have legitimate cause for relief under other statutes or policies of the university, it may refer the case back to Legal Affairs for further consideration.

#### G. Document Collection

To the extent reasonably possible, the USU Office of Legal Affairs will collect relevant documents provided by the Complaining Party or otherwise maintained by USU. The USU Office of Legal Affairs will forward the Complaint and any collected documentation to the Independent Personnel Board for their review.

#### H. Complaint Review and Report and Recommendation by Independent Personnel Board

The Independent Personnel Board shall convene as soon as practicable, but at least within seven (7) calendar days of their receipt to review the Complaint and relevant documentation and, as deemed necessary by the Independent Personnel Board, set a time to interview the Complaining Party, the Responding Supervisor, and any necessary witnesses.

The Responding Supervisor shall bear the burden to prove by substantial evidence that USU's action was justified by reasons unrelated to the Employee's Good Faith actions protected by USU Policy 326.

After the interviews, review of documents and other inquiry deemed necessary by the Board, the Independent Personnel Board shall issue a written recommendation with corresponding facts and reasoning on the following:

1. Whether the complainant was in fact a Complaining Party.
2. Whether the Complaining Party was subject to Retaliatory Action.
3. Whether or not the Responding Supervisor has established, by substantial evidence, that their actions were justified by reasons unrelated to the Complaining Party's Good Faith action or belief.
4. Whether the Responding Supervisor took a Retaliatory Action in violation of this Policy.
5. If the Independent Personnel Board finds that Retaliatory Action has been taken in violation of this Policy, the Independent Personnel Board may recommend remedies as set forth in Policy 326.

#### I. Report Issued to Final Decision Maker

The Independent Personnel Board will issue its written recommendations to the Final Decision Maker with a copy to the Complaining Party and Responding Supervisor within twenty-three (23) calendar days of the Complaining Party filing the Complaint with USU, unless the Complaining Party and the Independent Personnel Board have mutually agreed to a longer period of time not to exceed an additional thirty (30) calendar days.

When possible, the Final Decision Maker shall be the cognizant vice president or dean. If the cognizant vice president or dean has a Conflict of Interest or allegedly engaged in the Retaliatory Action, the president shall assign another vice president or dean to serve as the Final Decision Maker.

The Final Decision Maker may ask clarifying questions of any person(s) involved in the process and review any relevant information, as needed, to reach a final decision.

The Final Decision Maker shall issue a written final decision within seven (7) calendar days of receiving the Independent Personnel Board's recommendations: a) adopting the recommendations of the Board (in whole or part); b) rejecting the recommendations of the Board (in whole or part) and/or making such other findings and conclusions as necessary for each of the above-identified remedies, and/or c) referring the matter to the proper sanctioning authority within USU for the evaluation and imposition of sanctions against a Responding Supervisor found to have violated this Policy.

The Final Decision Maker shall send the written decision to, or make it available for review for, the Complaining Party, Responding Supervisor, and any other university officials that the Final Decision Maker deems necessary to effectuate the decision.

## **HISTORY**

## **RESOURCES**

### **Contacts**

Chief Compliance Officer  
Office of University Ethics and Compliance  
[www.usu.edu/compliance](http://www.usu.edu/compliance)  
(435) 797-8305