

THE CALIFORNIA STATE UNIVERSITY
OFFICE OF THE CHANCELLOR



BAKERSFIELD

September 12, 2018

CHANNEL ISLANDS

MEMORANDUM

CHICO

DOMINGUEZ HILLS

TO: CSU Presidents

EAST BAY

FROM: Timothy P. White
Chancellor

FRESNO

SUBJECT: Complaint Procedures for Protected Disclosure of Improper Governmental Activities and/or Significant Threats to Health or Safety — Executive Order 1115

FULLERTON

HUMBOLDT

LONG BEACH

Attached is a copy of Executive Order 1115, which supersedes Executive Order 929, and revises the complaint procedure for protected disclosure of improper governmental activities and/or significant threats to health or safety. This revised executive order expands the list of complainants to include third parties, extends the timeline for filing a complaint, allows for anonymous and verbal complaints to be made, adds a preliminary review process to determine if an investigation is warranted, and further clarifies the procedure requirements for handling a complaint by the appropriate administrator. This complaint procedure applies systemwide, and it is the campuses' responsibility to adopt and implement the procedures set out in this executive order instead of establishing their own procedures.

LOS ANGELES

MARITIME ACADEMY

MONTEREY BAY

NORTHRIDGE

POMONA

In accordance with policy of the California State University, the campus president has the responsibility for implementing executive orders where applicable and for maintaining the campus repository and index for all executive orders.

SACRAMENTO

SAN BERNARDINO

If you have questions regarding this executive order, please contact Equal Opportunity/ Title IX/Compliance at EO-TitleIX-Compliance@calstate.edu or (562) 951-4641.

SAN DIEGO

TPW/LH/tl

SAN FRANCISCO

Attachment

SAN JOSÉ

c: CSU Office of the Chancellor Leadership
Vice Presidents, Academic Affairs
Vice Presidents, Business and Administration
Vice Presidents, Student Affairs
Associate Vice Presidents, Academic and Faculty Affairs
Human Resources Officers
Campus Whistleblower Administrators

SAN LUIS OBISPO

SAN MARCOS

SONOMA

STANISLAUS

THE CALIFORNIA STATE UNIVERSITY
Office of the Chancellor
401 Golden Shore
Long Beach, California 90802-4210
(562) 951-4641

Executive Order: 1115
Effective Date: September 12, 2018
Supersedes: Executive Order 929
Title: Complaint Procedures for Protected Disclosure of Improper Governmental Activities and/or Significant Threats to Health or Safety

This executive order (EO) implements the intent of the California Legislature as stated in the California Whistleblower Protection Act (Govt. Code §8547 et seq.) and the California State University (CSU) Investigation of Reported Improper Governmental Activities Act (Educ. Code § 89570 et seq.). The scope of the Complaint procedure under EO 929 had been limited to CSU Employees and applicants for CSU employment. The CSU has expanded the scope of this EO beyond its statutory obligations under the Government Code and Education Code by including Third Parties. This EO revises the Complaint procedure and timelines for Employees and Third Parties to make Protected Disclosures of Improper Governmental Activity and/or Significant Threats to Health or Safety¹. The EO provides instructions to the campuses, which includes the Chancellor’s Office (CO), for processing such Protected Disclosures.

I. Scope of Procedure

The Complaint procedure is for Employees and Third Parties who wish to submit a Complaint that alleges Improper Governmental Activity and/or Significant Threat to Health or Safety has occurred or is occurring at the CSU.

II. Definitions

- A. Appropriate Administrator** means the Management Personnel Plan (MPP) Employee designated by the President or Chancellor to administer this EO. For the CO, the “Appropriate Administrator” shall be the Vice Chancellor of Human Resources or designee.
- B. Complainant (or Whistleblower)** means an Employee or Third Party who uses the established procedure of the CSU as set forth in this EO to make a Complaint.
- C. Complaint** refers to the allegation(s) of Improper Governmental Activity made or submitted to the Appropriate Administrator under this EO.

¹ Key terms are capitalized and are defined at Article II of this EO. Terms contained within this policy and procedure are intended to be gender neutral.

- D. Employee** refers to any person employed by the CSU.
- E. Filing Date** means the date that the Complaint was received by the Appropriate Administrator.
- F. Illegal Order²** refers to a directive to violate or assist in violating a federal, state, or local law, rule, or regulation, or an order to work or cause others to work in conditions outside of their line of duty that would unreasonably threaten the health or safety of Employees or the public.
- G. Improper Governmental Activity³** means any activity by the CSU, a CSU department or Employee that is undertaken in the performance of the Employee's duties, undertaken inside a CSU office, or if undertaken outside a CSU office by the Employee, directly relates to the CSU, whether or not that action is within the scope of employment, and that (1) is in violation of any state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty, or (2) is economically wasteful, or involves gross misconduct, incompetence, or inefficiency. For the purposes of this policy, "Improper Governmental Activity" includes Significant Threats to Health or Safety and Illegal Order(s).
- H. Investigator** means the CSU representative authorized to analyze the allegation(s), investigate, and conduct fact finding related to cases of alleged Improper Governmental Activities. The Appropriate Administrator may be the Investigator for a particular Complaint, or may delegate that function as appropriate.
- I. Preliminary Review** is the initial analysis conducted by the Appropriate Administrator to assess whether sufficient evidence is presented in the Complaint to initiate an investigation.
- J. Preponderance of the Evidence** means the greater weight of the evidence; i.e., that the evidence on one side outweighs, preponderates over, or is more than, the evidence on the other side. The Preponderance of the Evidence is the applicable standard for demonstrating facts and reaching conclusions in an investigation conducted pursuant to this EO.
- K. Protected Disclosure⁴** means a good faith communication, including a communication based on, or when carrying out, job duties that discloses or demonstrates an intention to disclose information that may evidence (1) an Improper Governmental Activity, or (2) a condition that may significantly

² Government Code § 8547.2 (b)

³ Education Code § 89572 (d); Government Code § 8547.2 (c)

⁴ Education Code § 89572 (e); Government Code § 8547.2 (e)

threaten the health or safety of Employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition.

- L. Respondent** means the CSU, a CSU department or an Employee who is alleged to have committed an Improper Governmental Activity as defined under this EO.
- M. Significant Threats to Health or Safety**⁵ means working condition(s) which the Complainant reasonably and in good faith believes constitute a substantial hazard to his/her own health and safety or the health and safety of others.
- N. Third Party or Third Parties** refers to a person other than an Employee. Examples include applicants for CSU employment, students, former Employees, union representatives, employees of auxiliary organizations, volunteers, independent contractors, vendors and their employees, visitors, and the general public.
- O. Vice Chancellor** means the Vice Chancellor of Human Resources at the CSU, designated by the Chancellor as the “Appropriate Administrator” for Complaints submitted to and/or investigated at the CO. For the purposes of this policy, the term “Vice Chancellor” may also include a designee.
- P. Working Days** are defined as Monday through Friday, excluding all official holidays or closures at the campus where the Complaint originated or at the CO where the Complaint is reviewed.

III. General Provisions

- A.** Complaints, responses, information obtained through investigation, and investigation reports under this EO shall be shared only with individuals who have a legitimate business reason to know, unless otherwise required by law.
- B.** By law, the CSU cannot reveal the name of a Complainant without his or her permission, except to appropriate law enforcement personnel who are conducting a criminal investigation, to the California State Auditor, or as otherwise required by law.⁶
- C.** It is the responsibility of each campus to adopt and implement the procedures set out in this EO for handling Complaints filed by Employees and Third Parties.
- D.** The CSU will provide reasonable accommodations to qualified individuals with a disability. Reasonable accommodations will be determined by the Appropriate Administrator following an interactive process with those individuals to identify the nature and extent of the restrictions and the appropriate accommodation.

⁵ Government Code § 8547.2(e)

⁶ Education Code § 89573(c)

- E.** It is the responsibility of each campus to notify the Vice Chancellor of all Protected Disclosures.

The above requirement is distinct from, and unrelated to, any reporting requirement related to EO 1104 and grievance or complaint tracking for Employee Relations or Labor Relations purposes. If, as a result of a Protected Disclosure, the CSU learns of cases of actual or suspected fraud, theft or other fiscal irregularities, the campus should also comply with EO 1104, *Campus Reporting of Fiscal Improprieties*, for reporting requirements and deadlines.

- F.** It is the responsibility of each campus to accept and process Protected Disclosures that are forwarded to the CSU by the California State Auditor. For guidance, campuses should consult the Office of Audit and Advisory Services at the CO.
- G.** When submitting a Complaint or issuing any notices required by this EO, personal delivery, electronic mail, overnight, certified or regular mail may be used. When using personal delivery or regular, overnight, or certified mail, the date of receipt by the Appropriate Administrator shall establish the Filing Date. Electronic communications must be sent to the designated CSU or campus e-mail address unless the intended recipient has specified a different address, and will be deemed received on the date sent.

IV. Timelines and Extensions

- A.** Unless otherwise noted, all time limits refer to Working Days.
- B.** Time periods set forth in this EO may be extended for good cause by the Appropriate Administrator, provided the Complainant is informed of the new time period in writing.

V. The Complaint

Any Employee or Third Party may submit a Complaint of suspected Improper Governmental Activities.

- A.** Complaints of suspected Improper Governmental Activities are encouraged to be made to the Appropriate Administrator in writing to ensure a clear understanding of the issues raised, but may be made orally or anonymously to the Appropriate Administrator. These Complaints should be factual rather than speculative or conclusory, and contain as much specific information as possible to allow for proper assessment to determine if an investigation is warranted.
- B.** An investigation is not warranted where the reported information and/or information that could be obtained by the Appropriate Administrator is insufficient. These determinations will be documented in writing by the Appropriate Administrator, and maintained in accordance with systemwide records retention policies.

- C.** Complaints may be submitted at the campus level or at the CO. The Appropriate Administrator shall determine whether the Complaint should be processed through another campus office or procedure available to the Complainant. If appropriate, the Appropriate Administrator shall direct the Complainant to that procedure as soon as possible.
- D.** The Complainant is encouraged to include the following information in the Complaint (or use the attached Complaint form, which includes the criteria below):

 1. The name and contact information of the Complainant (i.e., mailing address, email address, and phone number), the Complainant's CSU position title or relationship with the CSU (if Complainant is a Third Party).
 2. A detailed description of the alleged Improper Governmental Activities, as defined in this EO. The description should include the name(s) and title(s) of the Employee(s) or official(s) allegedly engaged in the Improper Governmental Activities (the "Respondent(s)").
 3. The date(s) the alleged Improper Governmental Activities occurred.
 4. Other potential witnesses to the alleged Improper Governmental Activities, the facts known by each, and if possible, their contact information.
 5. Any documentation that supports the allegations of Improper Governmental Activities. Individuals should not attempt to obtain documents they do not have the authority to access.
 6. Descriptions of documents that support the allegations of Improper Governmental Activities, if the actual documents are not in the possession of the Complainant.
- E.** A Complainant shall proceed with a Complaint in good faith. An Employee who knowingly and intentionally files a false Complaint shall be subject to discipline, up to and including termination. Any CSU Respondent or witness who knowingly and intentionally provides false statements or information shall be subject to discipline, up to and including termination. Such disciplinary action shall not be deemed to be retaliation.

VI. Making Complaints

- A.** Complaints should be made no later than twelve (12) calendar months after the Complainant knew or reasonably should have known of the event giving rise to the Protected Disclosure. Complainants may make a Complaint on the campus, or

they may make a Complaint directly to the Vice Chancellor under this EO. For that purpose, each campus President shall appoint an Appropriate Administrator who will receive the Complaint and process them on the campus in accordance with the procedures in this EO.

- B.** To make a Complaint to a campus, contact the specific campus to determine the identity of the Appropriate Administrator designated to receive Complaints. Visit <http://www.calstate.edu/hr/compliance/whistleblower/> for a list of the designated campus Appropriate Administrators authorized to accept Complaints under this EO.
- C.** To make a Complaint to the CO, the Complaint must be submitted to the Vice Chancellor, should be marked “Confidential” and addressed to:

Vice Chancellor of Human Resources
Equal Opportunity and Whistleblower Compliance Unit
Systemwide Human Resources
Office of the Chancellor
401 Golden Shore
Long Beach, California 90802

Complaints may also be sent via email to EO-TitleIX-Compliance@calstate.edu.

- D.** The Appropriate Administrator or designee shall acknowledge receipt of the Complaint in writing within ten (10) Working Days of the date the Complaint was received. The Filing Date is the date the Complaint was received by the Appropriate Administrator.
- E.** The Appropriate Administrator shall initiate an investigation of the matter if the totality of circumstances suggest reasonable cause to investigate. See Section VII below for the Preliminary Review procedures. The decision must be made on a case by case basis.

VII. Preliminary Review

- A.** To determine if the Complaint will be investigated, the Appropriate Administrator shall evaluate the allegation(s) by determining whether the totality of circumstances suggest reasonable cause to investigate. The totality of circumstances would lead a reasonable and prudent individual to believe an Improper Governmental Activity has occurred, is occurring, and/or will occur. This may require questioning the stated witness(es) and/or the Complainant. This Preliminary Review must not be performed in a manner that would reveal the purpose of the inquiry to the department or the Respondent(s).

- B.** The allegations are also evaluated to determine whether the Complaint contains the following information and falls within the scope of this EO:
1. The Complainant made a timely disclosure no later than twelve (12) calendar months after the event that gave rise to the Protected Disclosure or no later than 12 calendar months after the Complainant knew or reasonably should have known about the event;
 2. The allegations, if true, constitute an Improper Governmental Activity as covered under this EO;
 3. The allegations were accompanied by information specific enough to be investigated; and
 4. Corroborating evidence can be pursued. Such evidence may be in the form of witness testimony or documents.

An investigation should be conducted if it is established that the Complaint falls within the scope of this EO.

- C.** During the Preliminary Review process, the Complainant (if known) may provide additional information and documents to support the initial Complaint. In providing information and documents, the Complainant must fully cooperate and comply with the imposed deadline requirements. The Appropriate Administrator has the discretion to set a final date for submission of additional information.
- D.** If the Complainant raises any new allegations during the Preliminary Review process, the Appropriate Administrator shall decide whether to include new allegations as part of the existing Complaint, or treat the information as a new and separate Complaint. The Complainant may choose to initiate a separate inquiry by submitting a new Complaint.
- E.** The Complainant is required to fully cooperate in the Preliminary Review process, to be honest, maintain confidentiality, and provide information to the Appropriate Administrator. In addition, the Complainant (if known) must participate in a timely intake interview. In the event that the Complainant does not cooperate, the Appropriate Administrator may end the investigation.
- F.** The Preliminary Review process should be concluded, and the Complainant notified in writing of the outcome of this review, within thirty (30) Working Days of the Filing Date. If the results of the Preliminary Review determine that an investigation is warranted, a formal investigation will be initiated. If an investigation will not occur, the Appropriate Administrator will inform the Complainant (if known) that the Complaint will not be investigated and state the reasons.

VIII. Investigation and Outcome

- A.** If an investigation is initiated, the Appropriate Administrator will manage the


investigation, or may assign the Complaint to an Investigator. If the Appropriate Administrator delegates the responsibility for analysis, investigation, and/or fact finding, the Appropriate Administrator is still responsible for ensuring that the procedures in this EO are followed. Other CSU departments or staff may be consulted during the investigation based on their areas of oversight responsibility or expertise (e.g., risk management, environmental health and safety, academic affairs, finance, audit, and legal counsel). The Investigator shall complete the investigation within ninety (90) Working Days of the conclusion of the Preliminary Review process. The Preponderance of the Evidence standard shall be used to determine whether an Improper Governmental Activity has occurred.

- B.** Investigators have a duty of fairness, objectivity, thoroughness, ethical behavior, and observance of legal and professional standards. If an actual or perceived conflict of interest is suggested, the Appropriate Administrator shall determine if the investigation needs to be reassigned.
- C.** Employees and students of the CSU are required to cooperate with the investigation and other processes set forth in this EO, including but not limited to, attending meetings, being forthright and honest during the process, and keeping confidential the existence and details of the investigation. Nothing contained herein is intended or should be construed to interfere with an Employee's right to representation.
- D.** If the Appropriate Administrator determines that an Improper Governmental Activity has occurred, the Appropriate Administrator shall report this information with a recommendation for appropriate action to the President (or the Chancellor for the CO). The President or Chancellor or designee shall determine what action, if any, is warranted.
- E.** Within ninety (90) Working Days of the conclusion of the Preliminary Review process, the Appropriate Administrator shall issue a formal response to the Complainant that includes a summary of allegations, summary of the investigation, the Preponderance of the Evidence standard, a detailed description of the evidence considered, appropriate findings, and what actions, if any, are anticipated. The response shall be written in a manner that is consistent with the privacy interests of each person who is involved in the situation addressed by the response. This formal response is the final CSU decision.
- F.** The records of all investigations will be kept confidential, except that the CSU may issue a report of any investigation that has substantiated an allegation, keeping confidential the identity of the individual(s) involved. The CSU may also release the findings resulting from investigations as deemed necessary to serve the interests of the State, and may release reports if otherwise required by law.⁷

⁷ Education Code § 89574

IX. Retaliation

Retaliation against an Employee, former Employee, or applicant for CSU employment for exercising any rights under this EO is considered a separate issue and is covered under EO 1116, titled *Complaint Procedure for Allegations of Retaliation for Having Made a Protected Disclosure under the California Whistleblower Protection Act*. Please refer to EO 1116 for additional details.



Timothy P. White, Chancellor

Dated: September 12, 2018

Revision History:

As a result of the issuance of this executive order, the following documents are superseded as of the effective date of this executive order and are no longer applicable:

- Executive Order 929 (*Reporting Procedures for Protected Disclosure of Improper Governmental Activities and/or Significant Threats to Health or Safety*), dated January 6, 2005
- Executive Order 821 (*Reporting Procedures for Protected Disclosure of Improper Governmental Activities and/or Significant Threats to Health or Safety*), dated May 23, 2002

**EO 1115 Complaint Form for Protected Disclosures
of Improper Governmental Activities**

INSTRUCTIONS: The California State University (CSU) accepts Complaints about Improper Governmental Activities from Employees and Third Parties. An “Improper Governmental Activity” is defined as “an activity by the CSU, a CSU department or an Employee that is undertaken in the performance of the Employee’s duties, undertaken inside a CSU office, or if undertaken outside a CSU office by the Employee, directly relates to the CSU, whether or not that activity is within the scope of employment, and that (1) is in violation of any state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty or (2) is economically wasteful, or involves gross misconduct, incompetence, or inefficiency. Improper Governmental Activity also includes Significant Threats to Health or Safety and Illegal Order(s).”

The CSU does not automatically investigate every Complaint received. Each Complaint is evaluated carefully to determine whether it has enough potential merit to warrant the expenditure of resources to conduct an investigation.

Complaints should be factual rather than speculative or conclusory, and contain as much specific information as possible to allow for proper assessment to determine if an investigation is warranted. Complaints must identify specific witnesses, documents, and other sources of information that an Appropriate Administrator may examine to find support for an allegation.

Complaints of suspected Improper Governmental Activities are encouraged to be made to the Appropriate Administrator in writing to ensure a clear understanding of the issues raised, but may be made orally or anonymously to the Appropriate Administrator. However, if the Complainant is unavailable to answer questions or confirm the alleged facts, the Appropriate Administrator has the discretion to determine whether an investigation will be conducted.

When making an allegation, it is important to provide as much of the following information as possible for each allegation being made.

Who? Who are the Employees responsible for the Improper Governmental Activity? Who is each Employee’s supervisor? If non-CSU persons or individuals also are involved, who are they? If any businesses are involved, which businesses and who owns them? Who else knows anything about this?

What? What is the Improper Governmental Activity? Why is it improper? What laws or policies make the activity improper? What documents are there that will verify the Improper Governmental Activity occurred? Can you provide copies of the documents?

How? How do you know an Improper Governmental Activity has occurred? How did you discover the activity?

Where? Where did the activity occur (the department and location, including address)? Where can the Investigator locate the individuals who were involved or have information about the activity? Where can the Investigator find documents or other evidence related to the activity?

When? When did the activity occur? When did you discover the activity?

Why? Why did the activity occur? Did it provide some benefit to those involved? If so, how did they benefit? How was the activity able to occur? Were there no controls in place to prevent the activity? If there were controls in place, how were they circumvented?

The CSU allows Complaints to be submitted either at a CSU campus or at the Chancellor’s Office. If filing the Complaint at a campus, contact the campus to determine the identity of the Appropriate Administrator designated to receive these Complaints. If filing the Complaint at the Chancellor’s Office, please enclose the completed form in an envelope marked “Confidential” and mail it to:

Vice Chancellor of Human Resources
Equal Opportunity and Whistleblower Compliance Unit
Systemwide Human Resources
Office of the Chancellor
401 Golden Shore
Long Beach, California 90802

The Complaint may also be sent electronically to EO-TitleIX-Compliance@calstate.edu.

By law, the CSU cannot reveal the name of a Complainant without his or her permission, except to appropriate law enforcement personnel who are conducting a criminal investigation, to the California State Auditor, or as otherwise required by law.

---CONFIDENTIAL---
COMPLAINT FORM

Please provide all requested information. Use additional sheets of paper if necessary and write your name and the date at the top of each page.

PLEASE TYPE OR PRINT CLEARLY

Complainant Information

Campus: _____ Name: _____

Home Address: _____

City: _____ State: _____ Zip Code: _____

Telephone Number: _____ Email Address: _____

Check one:

Employee

Position title: _____

Third party

Relationship with the CSU: _____

Respondent(s) Information
*(Please provide names of individuals you believe are responsible for the
Improper Governmental Activity)*

Respondent #1 Name: _____		Position: _____	
Department: _____		Division: _____	
Work phone: _____		Email Address: _____	
Home Address (if known): _____			
Home phone: _____		Cell phone: _____	
Respondent #2 Name: _____		Position: _____	
Department: _____		Division: _____	
Work phone: _____		Email Address: _____	
Home Address (if known): _____			
Home phone: _____		Cell phone: _____	

If there are additional Respondents, please provide the above information on a separate page for each Respondent and attach to this Complaint Form. Write your name and the date at the top of each page.

Witness Information
(Please provide witnesses who can corroborate your allegations)

Witness #1 Name: _____		Position: _____	
Department: _____		Email: _____	
		Phone: _____	
Briefly describe the information this witness will be able to corroborate. Attach additional paper if necessary.			

Witness #2 Name: _____ Position: _____

Department: _____ Email: _____ Phone: _____

Briefly describe the information this witness will be able to corroborate. Attach additional paper if necessary.

Witness #3 Name: _____ Position: _____

Department: _____ Email: _____ Phone: _____

Briefly describe the information this witness will be able to corroborate. Attach additional paper if necessary.

Complaint Allegations

Briefly describe the alleged Improper Governmental Activity and how you know about it. *Specify who, what, when, where and how. If there are multiple allegations, number each allegation. Attach additional pages to this form, if necessary.*

Evidence

Please list all documents or other items of evidence that prove the allegations to be true and explain how each item provides proof. Attach additional pages to this form, if necessary. If you have any of the listed documents in your possession, please attach to this form.

Statement of Good Faith

You are proceeding with this Complaint in good faith. An Employee who knowingly and intentionally submits a false Complaint shall be subject to discipline, up to and including termination. CSU students who knowingly and intentionally submits a false Complaint can be subject to discipline under the Student Conduct Code. Such disciplinary action shall not be deemed to be retaliation under EO 1116.

I have read and understood the above statement.

Signature

Date

For University Use Only: Date Complaint Received _____

Signature _____