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Chapter: Personnel

Modification No. 010

Subject: **Equal Employment Opportunity and Non-Discrimination**

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I. Policy Statement

Montgomery College is committed to providing equal employment opportunity for all employees and applicants. Equal opportunity extends to all aspects of the employment relationship, including but not limited to recruiting, hiring, placement, promotions, training, working conditions, transfer, leaves of absences, compensation, and benefits. Further, the College is committed to providing an environment in which all persons are provided the opportunity for employment, participation in academic programs, and/or other College activities free from discrimination, harassment, and sexual assault in accordance with applicable federal, state, and local laws. Discrimination will not be tolerated and the College will consider a violation of this Policy to be a significant act of misconduct that may result in disciplinary action. When made aware, the College will take immediate action to stop the discrimination, prevent its recurrence, and remedy its effects.

II. Applicability

In accordance with applicable law and the College's commitment to access, equity, and diversity, the College does not discriminate against any student, employee, or applicant for employment on the basis of age, color, citizenship status, covered veteran status, disability, gender, gender identity and expression, genetic information, national origin, marital status, race, religion, sexual orientation, or for any other reason to the extent these attributes are not covered in this Policy and covered by federal, state and county laws and regulations. The College also prohibits retaliation against employees and students who, in good faith, bring complaints regarding perceived discrimination.

III. Education

Education is a key element of this Policy. The College will provide education and information, as appropriate, for students and employees to enhance understanding and increase awareness of the College's Equal Employment Opportunity and Non-Discrimination Policy. Any mandatory education requirements will be announced and posted on the College's website. The President is authorized to provide institutional leadership and guidance for developing education programs to promote awareness about non-discrimination. Some goals to be achieved through education are: (a) ensuring that all individuals are aware of their rights; (b) notifying individuals of conduct that is proscribed; (c) informing employees, contractors, and students about the proper way to recognize issues and address complaints involving a violation of this Policy; (d) preventing issues that this Policy addresses; and (e) identifying the necessary steps for preventing its recurrence and addressing its effects.

IV. The President is authorized and directed to establish procedures and programs to implement this Policy.

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Board Approval: September 21, 1987; December 18, 1989; April 15, 1991; July 15, 1991; September 21, 1999, November 18, 2002, December 13, 2010; February 25, 2013, February 23, 2015; December 12, 2016.

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Chapter: Personnel

Modification No. 006

Subject: **Equal Employment Opportunity, and Non-Discrimination**

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I. Introduction

- A. Montgomery College is an equal opportunity institution and, in accordance with applicable law, the College prohibits discrimination against any student, employee, or applicant for employment on the basis of age, color, citizenship status, current or former military status, disability, gender, gender identity and expression, genetic information, national origin, marital status, race, religion, sex, sexual orientation, and for any other reason covered by applicable federal, state and county laws and regulations. The College also prohibits retaliation against employees and students who, in good faith, bring complaints regarding perceived discrimination.
- B. The College is committed to providing an environment in which all persons are provided the opportunity for employment and/or participation in academic programs, and other College activities free from any form of harassment as prohibited by federal and state laws, including sexual misconduct. Conduct that constitutes discrimination and/or harassment violates College Policy and will not be tolerated. Violations of this Policy on the part of any College employee, or any student, or any participant in a College program or activity may result in appropriate disciplinary action, including discharge or expulsion.
- C. The College has taken steps to prevent and promptly correct all forms of discrimination. This internal complaint procedure provides a mechanism for aggrieved individuals to receive a prompt, thorough, and impartial review of issues believed to be in violation of the College's Equal Opportunity and Non-Discrimination Policy and [Equal Education Opportunity and Non-Discrimination Policy](#). Conduct pertaining to all forms of sexual misconduct; including sexual harassment, sexual assault, intimate partner violence/abuse, stalking, sexual exploitation, and sexual intimidation is covered by the procedures outlined in Policy 31001-Sexual Misconduct.
- D. When appropriate, the College expects students or employees to use internal means to resolve complaints related to 31006-Equal Employment Opportunity and Non-Discrimination and/or 41002-Equal Education Opportunity and Non-Discrimination, and to take advantage of any preventive and corrective opportunities.

II. Complaint Procedure - General

A. Intake, Investigation, and Recommendation

- 1. An employee shall present a complaint under this Procedure within 180 calendar days of the date of that incident or the date the employee should reasonably have known of the event underlying the complaint. If warranted, the employee/labor relations administrator, or designee, may extend this time limit for good cause shown by the employee. The complaint shall contain the Complainant's name, address, telephone number, the facts of the alleged violation, the date of the alleged violation, the name or names of the respondent(s), the requested remedy and any further information the Complainant believes relevant to the matter.

2. The College may establish the mechanism by which a complaint is submitted, which may include a form, a toll-free number, an online submission, or some combination of these mechanisms.
3. The employee/labor relations administrator, or designee, will determine whether the complaint is one that falls under this Procedure.
4. The employee/labor relations administrator, or designee, will determine whether the respondent employee(s) should be placed on paid administrative leave pending the outcome of the investigation.
5. The employee/labor relations administrator, or designee shall make every effort to meet with the complainant within ten (10) working days. If that timeframe is not feasible, such meeting will be scheduled as soon thereafter as is practicable.
6. Following review and evaluation of the complaint, the employee/labor relations administrator, or designee, shall notify the respondent(s), in writing, of the complaint, along with a copy of the appropriate College Policy and Procedure for which a violation has been alleged, and notice that College Policy and applicable law prohibit retaliation for the filing of a complaint or participation in an employment discrimination investigation. To the extent possible, confidentiality will be maintained at all times. The College may, however, inform other College employees who the College deems, in its sole discretion, should be made aware of the complaint.
7. If an investigation is appropriate, the employee/labor relations administrator or designee will make every effort to conduct such investigation within thirty (30) working days; however this timeline may be extended at the discretion of the investigator. Investigations, shall include:
  - a. interviewing relevant individuals;
  - b. reviewing relevant documentation;
  - c. meeting with the respondent(s); and
  - d. if necessary, conducting follow-up meeting with involved individuals.
8. The investigator shall make every effort to prepare a report and recommendation within thirty (30) working days after the conclusion of the investigation; however, this timeline may be extended at the discretion of the investigator. The report shall include:
  - a. the factual findings of the investigation;
  - b. a summary of the witnesses interviewed and evidence considered; and
  - c. a recommendation for resolution of the complaint.

The report and recommendation shall be submitted to the employee/labor relations administrator, or designee, or if the employee/labor relations administrator conducted the investigation, the chief human resources officer, or designee.
9. Within ten (10) working days after receiving the report and recommendation, the employee/labor relations administrator, or designee, or the chief human resources officer, of designee, as applicable, shall either approve the report and

recommendation, return it to the investigator for additional follow-up, or recommend alternate action. The employee/labor relations administrator, or designee, may reasonably extend this deadline.

10. The employee/labor relations administrator shall take action consistent with the approved report and recommendation or other agreed resolution.

B. Appeals

1. A complainant may appeal the decision reached following the investigation to the chief human resources officer, or designee, within ten (10) working days of the date the report and recommendation is approved.
2. An appeal may be submitted for only the following reasons: (i) a procedural error or omission occurred that significantly affected the outcome of the investigation or report and recommendation; and (ii) to consider new evidence, unknown or unavailable during the investigation, that could substantially impact the original finding (a summary of this new evidence and its potential impact must be included in the written appeal).
3. Upon receipt of an appeal, the chief human resources officer, or designee shall review the report and recommendation.
4. The chief human resources officer, or designee, shall issue a written decision on the appeal within ten (10) working days; however, this timeline may be extended at the discretion of the chief human resources officer or designee.

C. If discipline or discharge will result following the complaint/appeal process outlined above, the procedures set forth in 34002CP and 34003CP shall apply for purposes of implementing that decision.

D. The procedures outlined above notwithstanding, Montgomery College encourages individuals to pursue informal resolution of complaints. Employees may consult with employee/labor relations staff for assistance with seeking informal resolution of complaints.

E. Individuals have the right to file complaints with external enforcement agencies, including: Equal Employment Opportunity Commission; US Department of Labor; Office of Civil Rights of the Department of Education; the Maryland Commission on Human Relations; and the Montgomery County Human Relations Commission.

F. The Office of Employee and Labor Relations serves as the principal liaison with applicants for employment and College employees on matters of equal employment opportunity and equal education opportunity. Employees are encouraged to take advantage of this resource.

G. In cases of alleged sexual misconduct as defined in the Policy 31001-Sexual Misconduct, the procedures of that Policy shall be followed.

H. Individuals who are concerned they have witnessed, or have been subjected to prohibited discriminatory actions should discuss their concerns with their immediate supervisor, appropriate administrator, or the employee/labor relations staff. The College

recommends that individuals immediately bring their concerns to management's attention in order to facilitate prompt attention and action. An immediate supervisor or appropriate administrator, through consultation with human resources staff, will attempt to efficiently resolve the matter.

- I. Under these procedures, an employee or applicant for employment filing a complaint alleging a violation of the Equal Employment Opportunity and Non-Discrimination Policy (31006) must report in the complaint all known claims that have occurred prior to the date on which the complaint is filed. If, during the investigation, additional potential violations of the Equal Employment Opportunity and Non-Discrimination Policy are discovered, the College may open a separate investigation on those new allegations. The College may reject any claim to the extent it includes allegations that the Complainant(s) knowingly did not report in an earlier complaint. However, the College may, in its sole discretion, permit consideration of such allegations if it is satisfied (i) that the employee, applicant, or student provides an adequate explanation for not reporting the allegations in the prior complaint and (ii) that the interests of all parties would best be served by considering the new allegation.

- J. Complaints of discrimination will be investigated and addressed in a fair and impartial manner. All individuals involved in the investigation will be treated with dignity and respect. Retaliation against a complainant or individual participating in an investigation under this Procedure is prohibited.

- K. Access to Information

All members of the College community are expected to cooperate with the investigation by providing timely information in the format requested. The investigator shall have access to personnel information about employees. The investigator shall also have access to the educational records of students, in whole or in part. Personal information obtained from educational records of students shall not, however, be disclosed to third parties other than the College's General Counsel, appropriate Senior Vice President, the President, and the appropriate administrative official(s) who might require access in order to conclude the investigation and implement a corrective action. Employees who fail to promptly cooperate with an investigation under this Policy shall be subject to disciplinary action.

- L. Complaint Withdrawal

Complainant(s) may request the voluntary withdrawal of the complaint. The request shall be in writing to the chief human resources officer, or designee. A request to withdraw will not stop an investigation if facts determine that the College must take action.

- M. Interim Measures

Based on the information gathered during the investigation, the College reserves the right to take appropriate interim measures designed to provide relief to the affected person(s), reduce the likelihood of recurrence, or address immediate effects of the behavior.

- III. Implementation of Corrective Action

- A. The appropriate administrators/disciplinary authority shall act to implement corrective action as stated in the report and recommendation or as determined by the chief human

resources officer, or designee, if there was an appeal, or as soon as practical of the report and recommendation, or the appeal, if applicable, is finalized.

- B. If there is a final determination that there has been a violation of the College's Policy with respect to a grade awarded to a student, the finding or determination shall be forwarded to the Complainant(s), Respondent(s), and the appropriate Dean, who shall select a review committee in accordance with the procedures stated in the Academic Regulations for the review of allegations of arbitrary and capricious grading. The review committee, which is established pursuant to the Academic Regulations to review allegations of arbitrary and capricious grading, shall have no authority to reverse the finding or determination of the chief human resources officer, or designee, and shall confine its consideration to a determination of the appropriate corrective action with respect to the grade. The Committee shall forward to the chief human resources officer, or designee, Complainant(s), and Respondent(s) a written recommendation as to the appropriate corrective action with respect to the grade. Every effort shall be made to submit the recommendation within thirty (30) working days; however, the Committee may reasonably extend this timeline at its discretion.
- C. The Senior Vice President for Academic Affairs shall review the recommendation of the committee and, upon completing such review, shall issue a final written determination of the corrective action with respect to the grade she or he determines to be appropriate for such violation (which she or he shall implement), and a copy of which shall be forwarded to the Complainant(s), Respondent(s), and chief human resources officer, or designee,. The Senior Vice President shall make every effort to issue the final determination within ten (10) working days; however, the Senior Vice President may reasonably extend this timeline at their discretion.
- D. Once the disciplinary/grievance process, including any available appeal, has concluded, whatever decision is made regarding the disciplinary action constitutes the final administrative decision of the College in the matter. The chief human resources officer, or designee, shall ensure that the Complainant(s) is appropriately advised of the resolution of such disciplinary action.
- E. No provision of this Policy shall be construed as a limitation on disciplinary action available under applicable policies and procedures. If an investigation is conducted under this Policy and no Policy violation is found, that fact does not prevent discipline of the respondent(s) under other applicable Policies and Procedures.

#### IV. Alternative Dispute Resolution

Upon mutual agreement of the complainant and the employee/labor relations administrator, or designee, a complaint may be referred to mediation. If the grievant and the College agree to mediate a complaint, the employee/labor relations administrator, or designee, shall select an appropriately trained individual as a neutral mediator to help the parties resolve a workplace dispute.

#### V. Confidentiality

The College recognizes the importance of confidentiality. To the extent possible, all information received in connection with the filing, investigation, and resolution of complaints will be treated as confidential. Records will be maintained in a confidential manner to the extent permitted by law

and insofar as they do not interfere with the College's legal obligation to investigate and resolve issues of discrimination. Thus, confidentiality will be maintained except as disclosure may be required to be made: (i) by law; (ii) to individual witnesses with knowledge of facts relating to the complaint; (iii) to appropriate human resources department staff; (iv) to union representatives in the event the Complainant(s) and Respondent(s) are union members, and/or; (v) on a need to know basis to counsel, insurers, auditors, appropriate Board members and executives of the College.

VI. Non-Disclosure of Genetic Information

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by law.

To comply with this law, employees should not provide any genetic information when responding to a request for medical information made in connection with a request for an accommodation, including any leave of absence.

"Genetic information," as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

VII. Maintenance of Documentation

Documentation resulting from the investigation at each level in the complaint procedure will be maintained by human resources, and is not considered part of an employee's personnel file, except to the extent that personnel action(s) result from the investigation.

VIII. Retaliation Prohibited

Retaliation against a person who has filed a complaint or against any individual who participated in an investigation is strictly prohibited. Any retaliatory action by any College employee or student against a Complainant or witness is prohibited and may be grounds for disciplinary action or dismissal from the College.

IX. Good Faith Reporting

Any individual found to have knowingly and intentionally filed a false allegation or provided false information may be subject to appropriate disciplinary action. A complaint made in good faith is not considered false merely because the evidence does not ultimately support the allegation of discrimination.

X. Time Limits

Working days are defined as all days during the calendar year other than Saturdays, Sundays, and days the College is closed.

The employee/labor relations administrator, or designee, may exercise reasonable discretion to adjust the time limits set forth in this procedure.

XI. Receipt of Notification

Whenever, under these procedures, individuals must be notified in writing, a copy shall be served in person, by certified, return receipt requested mail to the address that is kept on file at the College, or via email. For purposes of computing any time frames under these procedures, where service is by US mail, the date of service shall be considered to be the third day after the postmarked date of the letter. It is the responsibility of the individual to ensure that the College has their current address on file.

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Administrative Approval: July 16, 1999; March 10, 2003; December 13, 2010; February 24, 2015; December 13, 2016; March 27, 2018.