



BOARD OF DIRECTORS AGENDA REPORT

MEETING DATE: **MAY 26, 2022** ITEM: **8C**

SUBJECT: **Ratification of Amended Language for Board Governance Policy 6.05 (Reporting Wrongdoing)**

DATE: May 20, 2022

FROM: Michele Richards, CEO

PRESENTATION BY: Michele Richards, CEO

Action Item

BACKGROUND

At the April 2022 meeting, the Board of Directors voted to approve the Governance Committee and staff's recommendation to eliminate the Ethics Hotline in Board Governance Policy 6.05 (Reporting Wrongdoing). This recommendation was based on two factors: 1) that the hotline was seen as a duplication of the State's Whistleblower Hotline and reporting process, and 2) that oversight of the Ethics Hotline by the Board of Directors could be a potential conflict of interest.

Following the April Board meeting, staff reviewed the policy language and amended the language to reflect the Board's decision. A redline version of Policy 6.05 is attached.

RECOMMENDATION

Approve staff's recommended policy language amendments.

32nd District Agricultural Association

Board Policies

Board Policy 2.05: Reporting Wrongdoing

Date Adopted/Last Revised: ~~February 27, 2020~~ May 26, 2022

Note: Capitalized terms not otherwise defined in this Board Policy have the meanings set forth in the Definitions section of Board Policy 1.01. Should any provision in this policy contradict any provision of California law, California law shall control.

Purpose

The 32nd DAA Code of Ethics (*Board Policy 2.02*) requires all 32nd DAA Personnel to meet the highest standards of ethical conduct and behavior. This Board Policy is designed to provide clear guidance to 32nd DAA Personnel about their responsibility to report any unethical behavior or wrongdoing related to the 32nd DAA.

Note: This Board Policy supplements but does not replace any whistleblower protections provided for under California law, including but not limited to, the California Whistleblower Protection Act.

If any provision contained in this Board Policy conflicts with any provision of California law, the provision of California law shall govern and control.

Policy

All 32nd DAA Personnel are required to immediately file a report when they observe or otherwise become aware of any illegal and/or unethical behavior, including any violations of law, Board Policies, other 32nd DAA policies, or California State rules or regulations, including with respect to fraud, waste, and abuse (collectively, “Wrongdoing”). Any use of these reporting procedures in bad faith or in a false or frivolous manner is a serious violation of the 32nd DAA’s commitment to ethical behavior.

~~The 32nd DAA maintains an anonymous ethics hotline (the “Ethics Hotline”) for employees, Board Members, and community members to report anonymously allegations of Wrongdoing. The Ethics Hotline is administered by an independent third party and is overseen by the Board.~~

Retaliation and Whistleblower Protections

A whistleblower as defined by this policy is an employee of the 32nd DAA who reports an activity that the employee considers in good faith to be Wrongdoing. Whistleblower protections are provided in two important areas—confidentiality and retaliation.

Confidentiality

Consistent with California law, the 32nd DAA will make every effort to protect the reporter’s identity. Information provided in a hotline report may be the basis of an internal or external investigation by the 32nd DAA into the issue. It is possible that as a result of the information provided, a reporter’s identity may become known during the course of the investigation.

Retaliation

The 32nd DAA will not retaliate, or permit any retaliation, against a whistleblower who makes a report in good faith. This includes, but is not limited to, protection from retaliation in the form of any adverse employment action such as termination, compensation decreases, demotion, poor work assignments, threats of physical or reputational harm, bullying, harassment, interfering with job responsibilities, and/or any other form of retaliation. 32nd DAA Personnel are strictly prohibited from engaging in unlawful retaliation. Violations of this prohibition will be treated as serious misconduct. Any whistleblower who believes they are being retaliated against should immediately report that information in accordance with the reporting procedures below. The right of a whistleblower for protection against retaliation does not include immunity for any personal wrongdoing that is alleged and found to have occurred.

Procedure

Reporting Procedure

32nd DAA employees may report allegations of Wrongdoing by other employees to their direct supervisor, to the CEO, to the Director of Human Resources, or to the California State Auditor’s Office under the California Whistleblower Protection Act~~the Ethics Hotline~~. 32nd DAA

employees may report allegations concerning potential Wrongdoing by the CEO, CEO Direct Reports, or a Board Member to the Board Chair (or, if the allegation involves the Board Chair, to the Board Vice Chair). ~~to the Ethics Hotline. Individuals reporting to the Ethics Hotline have the option to remain anonymous.~~ If possible, reporters should provide evidence or documentation in their report to provide supporting information critical to a potential investigation.

Board Members should report allegations of Wrongdoing to the Board Chair (or, if the allegation involves the Board Chair, to the Board Vice Chair).

Employees or Board Members may file a complaint with the California State Auditor's Office under the California Whistleblower Protection Act. The State Auditor is authorized to accept complaints from state employees and members of the public who wish to report an improper governmental activity and protects every state employee who files a complaint from suffering any retaliation by his or her state employer for having made the complaint.

A complaint may be filed by contacting the Whistleblower Hotline at (800) 952-5665, faxed to (816) 322-2603, or sent by mail to:

Investigations
California State Auditor
P.O. Box 1019
Sacramento, CA 95812

An electronic complaint form and on-line Whistleblower Complaint Submission form are available at the State Auditor's website: <https://www.auditor.ca.gov>

Response Procedures

Responses to whistleblower reports will depend on the nature of the issue.

Allegations Against Employees Other than the CEO or a CEO Direct Report

All whistleblower reports involving allegations of Wrongdoing by employees other than the CEO or a CEO Direct Report shall be referred directly to the CEO. The CEO will perform an initial review and consult with other applicable government agencies (e.g., CalHR, CDFA, etc.), and determine appropriate follow-up actions. The CEO may consult with and delegate responsibility for follow-up action to other Executives and/or the Director of Human Resources. The CEO shall, in his/her reasonable judgment, inform the Board Chair and Board Vice Chair of

any significant allegations of Wrongdoing or of allegations that suggest a pattern of Wrongdoing or systemic issues.

Allegations Against Board Members, the CEO, or a CEO Direct Report

All whistleblower reports involving allegations of Wrongdoing by the CEO, a CEO Direct Report, or a Board Member shall be referred directly to the Board Chair and Board Vice Chair. If the allegation involves the Board Chair, the report shall be referred directly to the Board Vice Chair and the Board Member currently serving as chair of the committee responsible for overseeing the 32nd DAA's response to its annual CDFA audit and compliance review (the "Audit Chair"). If the allegation involves the Board Vice Chair, the report shall be referred to the Board Chair and the Audit Chair. The Board Chair and Board Vice Chair (or Audit Chair, if applicable) will perform an initial review, consult with the Office of the Attorney General and/or other applicable government agencies (e.g., CDFA, CalHR, Office of the Governor), and determine appropriate follow-up actions.