

Board Procedure 5250BP

Reporting Improper Governmental Actions and Protecting Whistleblowers Against Retaliation



I. INTRODUCTION

It is in the public interest to encourage District employees to report instances of improper governmental action in order to give the District the opportunity to take corrective action. The most effective way to encourage public employees to report improper governmental action is to provide an effective whistleblower protection program that includes a clear reporting process and effective protection from retaliation. This procedure is intended to maintain an effective District whistleblower program that meets the intent of Chapter 42.41 RCW, "Local Government Whistleblower Protection."

II. SUMMARY

This procedure:

- Explains how, when, and to whom employees should report concerns about improper governmental actions by District officials or employees;
- Provides for the thorough and impartial investigation of those reports and for the communication of the results to the reporting employee and to those District officials or employees who have authority to take appropriate corrective action;
- Prohibits retaliation against employees who in good faith make such reports or cooperate in the investigation of those reports and informs them how to file a complaint if they believe retaliation has occurred;
- Provides for the thorough and independent investigation of retaliation complaints and for the communication of the results to the complaining employee and to those District officials or employees who have authority to remedy retaliation found in those investigations; and,
- Explains how an employee who is not satisfied with the District's response to a retaliation complaint may request a hearing to adjudicate their complaint.

III. DEFINITIONS

The following defined terms are used in the Procedure. (Defined terms are capitalized when they are used in this Procedure).

- A. "Adverse change" means an involuntary change in an employee's terms and conditions of employment. It includes, but is not limited to, denial of adequate employees to perform duties; frequent employee changes; frequent and undesirable office changes or changes in the physical location

of the employee's workplace or a change in the basic nature of the employee's job; refusal to assign meaningful work; unsubstantiated letters of reprimand or unsatisfactory performance evaluations; demotion; reduction in pay; denial of promotion, transfer or reassignment; suspension or dismissal or other disciplinary action; a supervisor or superior behaving in or encouraging coworkers to behave in a hostile manner toward the employee; or any other significant action that is inconsistent compared to actions taken before the employee engaged in conduct protected by this procedure or compared to other employees who have not engaged in conduct protected by this procedure.

- B. "District Employee" or "Employee" means every individual who is, or was at the time the relevant actions were taken, appointed to a permanent, temporary, or intermittent position of employment with the District;
- C. "District Investigator" means a District employee or contractor authorized to conduct an investigation under this procedure.
- D. "District Official" means a member of the District Board of Directors;
- E. "Ethics Officer" means the District's designated Ethics Officer and his or her authorized staff (currently the Ethics Officer);
- F. "Good Faith" means having a reasonable basis to believe the information provided is accurate;
- G. "Gross Waste of Public Funds or Resources" means:
 - 1) To spend or use District funds or resources, or to allow the use of District funds or resources, in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation; or,
 - 2) The non-collection of a debt or other obligation owed the District when the non-collection is done in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation.
- H. "Improper Governmental Action" means any action by a District official or employee undertaken in the performance of official duties, whether or not the action is within the scope of employment, that:
 - 1) Violates any federal, state, or local statute or rule;
 - 2) Is an abuse of authority;
 - 3) Is of substantial and specific danger to the public health or safety; or,
 - 4) Results in a Gross Waste of Public Funds or Resources.

"Improper Governmental Action" excludes personnel matters, including but not limited to, employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, reprimands, or alleged violations of collective bargaining civil service laws, or collective bargaining agreements ("CBA").

- I. "Retaliate" and "Retaliation" each mean to make, or use one's authority to make, an Adverse Change in an Employee's terms or conditions of employment if one of the following employee actions was a contributing factor in the District's decision to make the Adverse Change:
The employee has in Good Faith, or is perceived to have:

- 1) Timely reported under this procedure an Improper Governmental Action by another employee or District official;
 - 2) Co-operated in an investigation conducted under this procedure;
 - 3) Testified in a proceeding resulting from an investigation conducted under this procedure; or,
 - 4) Provided information about an Improper Governmental Action to someone outside the District:
 - i. at least 60 days after the District Investigator or the Ethics Officer has issued an investigative report finding that an Improper Governmental Action occurred; or,
 - ii. if no investigative report has yet been issued, at least 120 days after the original report of an Improper Governmental Action was filed.
- J. **“Superintendent”** means the Superintendent of the District or his or her designee.

IV. CONFIDENTIALITY PROVISIONS

- A. **Anonymous Reports of Improper Governmental Action.** The District and the Ethics Officer shall accept and, to the extent practicable, investigate anonymous reports of Improper Governmental Action.
- B. **Identity of a Reporting Employee.** A District Investigator and the Ethics Officer shall not disclose the identity of an employee who reported an Improper Governmental Action unless the disclosure is required by law or the employee authorizes the disclosure in writing.
- C. **Identity of Witnesses.** During the pendency of an Improper Governmental Action or Retaliation investigation, a District Investigator and the Ethics Officer shall make their best efforts to not disclose the identity of a witness who requests confidentiality unless the disclosure is required by law or the witness authorizes the disclosure.

V. PROCEDURES FOR REPORTING IMPROPER GOVERNMENTAL ACTION

- A. **Where to Report:** A District Employee who becomes aware of an Improper Governmental Action:
 - 1) Is encouraged to report such actions first to their supervisor or to a management employee in their chain of command;
 - 2) May report such actions directly to the District Human Resources (“HR”) Department or to the Ethics Officer;
 - 3) May, if the employee reasonably believes that a crime is about to be committed, report such actions directly to any law enforcement agency; and,
 - 4) May, if the employee reasonably believes emergency circumstances exist that if not immediately changed may cause damage to persons or property, report such actions directly to an appropriate government agency or other person with the authority to address such emergencies. This includes appropriate reporting to Child Protective Services. Emergency circumstances under this

subsection do not include when prompt attention and reporting by the employee could have avoided the perceived emergency.

- B. **When to Report:** In order to be timely, a report of Improper Governmental Action must be filed within one (1) year after the occurrence of the alleged improper action, or within one (1) year after a reasonable person similarly situated to the reporting employee would have become aware of the action. The District or the Ethics Officer may investigate an untimely filed report if they determine that doing so is in the public interest.

VI. INVESTIGATIONS OF IMPROPER GOVERNMENTAL ACTIONS

- A. The District shall investigate, or cause to be investigated, reports of conduct that, if true, would constitute an Improper Governmental Action. District supervisors or other management employees shall, upon receiving such a report, take prompt action to assist the District in properly investigating the report. The investigation may be conducted by a District Investigator or by the Ethics Officer.
- B. **Ethics Officer Investigations.**
 - 1) The Ethics Officer may investigate reports of Improper Governmental Action either filed with or referred to the Ethics Officer. The Ethics Officer shall endeavor to complete the investigation within ninety (90) days.
 - 2) The Ethics Officer may also refer such reports to District management or to another governmental agency that has jurisdiction to investigate such matters.
 - 3) The Ethics Officer may close an investigation if he or she determines that no further action is warranted and shall notify the District and the reporting employee.

VII. REPORTS OF INVESTIGATIONS OF IMPROPER GOVERNMENTAL ACTIONS

- A. The District investigator or the Ethics Officer shall, upon completing an investigation, issue a report summarizing the facts and determining whether an Improper Governmental Action occurred. The District Investigator or the Ethics Officer may submit a draft report for review and comment prior to issuing a final report.
- B. **A copy of the final report:**
 - 1) Shall be provided to the reporting employee, the appropriate Assistant Superintendent, and the District General Counsel; and,
 - 2) May be provided to the Superintendent and/or the School Board President.
- C. **District Response:** The Ethics Officer may request that the District respond to the investigative report. If the Ethics Officer determines that the District's response is inadequate, the Ethics Officer shall report that determination to the Superintendent and to the School Board.

VIII. RETALIATION PROHIBITED

It is a violation of this procedure for any District Official or employee to Retaliate against any Employee.

IX. RETALIATION COMPLAINTS

- A. When to File. In order to be timely, an employee's Retaliation complaint must be filed within 180 days after the Adverse Change alleged to constitute Retaliation occurred, or within 180 days after a reasonable person similarly situated to the employee should have become aware that the Adverse Change occurred.
- B. Where to File: The complaint shall be filed with the Ethics Officer or the Assistant Superintendent for Human Resources. Complaints filed with the Assistant Superintendent for Human Resources shall be forwarded to the Ethics Officer within five (5) business days.
- C. Contents of the Complaint. The complaint shall identify in writing:
 - 1) The Adverse Change(s) alleged to constitute Retaliation and the date(s) it occurred;
 - 2) The District Official(s), or Employee(s) who made the Adverse Change or Changes;
 - 3) The employee's original report of an Improper Governmental Action or other conduct that qualifies the employee for nonretaliation protection under this procedure; and,
 - 4) If the original report was not made in writing to the Ethics Officer or Assistant Superintendent for Human Resources, appropriate independent evidence that the employee made such a report on a timely basis.

X. RETALIATION COMPLAINTS – INVESTIGATIONS

- A. The Ethics Officer shall investigate all timely retaliation complaints alleging facts that, if true, would constitute Retaliation in violation of this procedure. The Ethics Officer shall endeavor to complete the investigation within ninety (90) days.
- B. The Ethics Officer shall notify the Assistant Superintendent for Human Resources of the name(s) of any employee(s) alleged to be responsible for retaliatory activity and the Assistant Superintendent for Human Resources shall notify such employee(s) within a reasonable time of the existence of the investigation and the allegations made, which shall not be more than twenty-one (21) days after the commencement of the investigation.
- C. The Ethics Officer may refer a complaint to District management, through the General Counsel's office, at the discretion of the Ethics Officer. The Ethics Officer will not divulge the identity of the Cooperating Employee without a written waiver of confidentiality by the employee. The responsible department head shall respond to the Ethics Officer within ninety (90) days, including identification of any appropriate corrective action.

XI. RETALIATION COMPLAINTS – INVESTIGATION REPORTS

- A. The Ethics Officer shall issue a written report summarizing the facts and determining whether Retaliation occurred. The Ethics Officer may submit a draft report for review and comment prior to issuing the final report.
- B. If the final report finds no retaliation occurred, the Ethics Officer shall dismiss the complaint and inform the District, the complaining employee and any employee alleged to have engaged in retaliation.
- C. If the final report finds retaliation occurred, the Ethics Officer's report:
 - 1) Shall summarize the facts upon which the finding is based;
 - 2) May identify any District employee(s) the Ethics Officer found responsible for retaliation;
 - 3) May recommend District action to address the retaliation;
 - 4) Shall be provided to the complaining employee, any employee found to be responsible for retaliation, the appropriate Assistant Superintendent, Superintendent, and the District General Counsel; and,
 - 5) May be provided to the Superintendent and/or the School Board President.

XII. DISTRICT RESPONSE TO REPORT FINDING RETALIATION

If the Ethics Officer finds retaliation in violation of this procedure, the Assistant Superintendent(s) for the department(s) involved shall respond to the Ethics Officer and complaining employee in writing not more than 30 days after the final report is issued:

- 1) Describing the actions the District will take to correct the retaliation; or,
- 2) Notifying the Ethics Officer that the matter has been resolved with the complaining employee.

XIII. EMPLOYEE'S APPEAL, HEARING, AND REMEDIES

- A. A complaining employee or an employee found responsible for retaliation, who is dissatisfied with the Ethics Officer's report or the District's response may submit a written request for an appeal hearing before the Deputy Superintendent.
- B. In order to be timely, a written request must be sent to the District General Counsel not more than thirty (30) calendar days after:
 - 1) The Ethics Officer issues a report finding no retaliation; or,
 - 2) The response in paragraph 12 is provided or the deadline for doing so has passed. Such written request shall specify the alleged retaliatory action and the relief requested.
- C. The Deputy Superintendent shall convene an appeal hearing within thirty (30) days of receipt of the written request, at which time the complaining employee and any employee found responsible for retaliation shall be permitted to make written and oral presentations. Relief that may be granted is set forth in RCW 42.41.040(7). Any disciplinary action against an employee found to have been responsible for retaliation shall be addressed through separate procedures, including CBAs, if appropriate. The Deputy Superintendent shall issue a written decision not later than thirty (30) days after the completion of the hearing.

- D. A complaining employee or an employee found responsible for retaliation who is dissatisfied with the decision of the Deputy Superintendent may request an administrative hearing before the state office of administrative hearings pursuant to RCW 42.41.040 to establish that a retaliatory action occurred and to obtain appropriate relief as defined in RCW 42.41.040(7). In order to be timely, a written request must be sent to the District General Counsel not more than thirty (30) calendar days after receipt of the decision of the Deputy Superintendent. Within fifteen (15) working days of receipt of a timely request for a hearing, the District shall apply to the state office of administrative hearings for an adjudicative proceeding before an administrative law judge as provided in RCW 42.41.040.

XIV. INTIMIDATION PROHIBITED

It is a violation of this procedure for any District Official or Employee to use his or her official authority or influence, directly or indirectly, to threaten, intimidate, or coerce an employee for the purpose of interfering with that employee's right to report or disclose information concerning an Improper Governmental Action under this procedure.

XV. RELATIONSHIP TO COLLECTIVE BARGAINING

Nothing in this procedure is intended to diminish existing employee rights under any CBA.

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Cross Reference: Policy No. 5250