

# SCHOOL DISTRICT OF PITTSVILLE BOARD POLICY

## PERSONNEL

### GENERAL PERSONNEL POLICIES EMPLOYEE GRIEVANCES

### EMPLOYEE WHISTLEBLOWER PROTECTIONS

527.1

Protected Reports and Participation. This policy and various applicable laws provide protection to any employee who, acting reasonably and in good faith, makes a protected report of or participates in an internal investigation, official external investigation, or any legal proceeding involving allegations of any of the following in connection with any of the District's programs or operations:

1. Fraud or any gross mismanagement, waste, or abuse of District-controlled funds or other District resources, including federal funds for which the District is responsible as a recipient, subrecipient, contractor, or pass-through entity;
2. Any arbitrary and capricious exercise of authority relating to a federal contract or federal grant that is inconsistent with the mission of the applicable federal agency or with the successful performance of the federal contract or grant;
3. A violation of the federal False Claims Act;
4. Unlawful harassment or discrimination, including but not limited to unlawful harassment, that is based on a legally-protected status or characteristic;
5. Any situation which poses a substantial and specific danger to public health or safety, including any recognized hazard that is likely to cause death or serious physical harm to any person;
6. A possible violation of a state or federal law or regulation, including but not limited to any alleged violation of an established safety or health standard (or any variance therefrom), including any occupational safety or health standard or the environmental laws any law or regulation relating to asbestos in schools;
7. A workplace injury, including pursuing a worker's compensation claim;
- ~~8. A situation which poses a recognized hazard that is likely to cause death or serious physical harm to any person;~~
8. A failure to pay wages as required under law; or
- ~~9. A violation of Board policies or rules.~~
9. A possible violation of any state or federal law (including any state or federal regulation) that is not covered by a more specific time in this list, but for which any state or federal law provides whistleblower/nonretaliation protections to District employees.
10. A possible violation of a Board policy, a Board-adopted rule/procedure, or an administratively-adopted rule/procedure of the District for which any state or federal law provides whistleblower/nonretaliation protections to District employees.

A protected report of any situation or allegation covered by this policy includes any report, disclosure, provision of evidence, complaint, or request for an official internal or external investigation that is made:

1. To the employee's immediate supervisor, an administrator who is responsible for the activity, program, or operational area in question, the District Administrator, or the School Board;
2. Using any applicable District-established complaint procedures;

3. To a state or federal agency that has authority or responsibility over the matter;
4. To a local, state, or federal law enforcement agency (including the U.S. Department of Justice or the Wisconsin Department of Justice);
5. To a member of Congress, a representative of a committee of Congress, the federal Government Accountability Office, or a federal agency's Office of Inspector General in any matter involving federal programs, federal contracts, or federal funds; or
6. To any court or grand jury or in any judicial or administrative proceeding relating to the allegation(s).

Protected reports include the provision of evidence/information as part of a governmental investigation or legal proceeding. A protected report may involve or relate to the conduct of any person, including District employees, Board members, volunteers, consultants, vendors, contractors, or other parties maintaining any business or programmatic relationship with the District.

Retaliation and Discrimination Prohibited. No official, employee, or agent of the District may retaliate or discriminate against any employee because the employee has made a protected report or participated in a protected investigation or proceeding. Prohibited retaliation and discrimination include but are not limited to discharging, demoting, denying benefits to, threatening, coercing, or taking any other **materially** adverse employment action against an employee because of the employee's protected activity. However, except as otherwise limited by state or federal law, this policy is not intended to prohibit or limit the District from taking any adverse employment action (1) for conduct that is not undertaken reasonably and in good faith; or (2) that is based on non-protected reasons and that would have occurred even in the absence of the employee's protected report or protected participation.

Intra-District Reporting Required. ~~Except in situations where an employee is exercising a legal right to make a confidential report to an external agency or to participate in an official investigation or legal proceeding that is not disclosed to his or her employer, the District requires all employees to report to the District any allegations of the above-listed improprieties any time the employee (1) in good faith concludes that he or she knows of or reasonably suspects such an impropriety, or (2) makes a protected report under this policy to an external entity.~~ The District requires employees to promptly inform an appropriate District official of the circumstances relating to a protected report/disclosure that the employee has made to an external governmental official or entity, including through the employee's participation in an official investigation or legal proceeding, **unless** either of the following exceptions applies:

1. An applicable law or a judicial or governmental order prohibits the employee from disclosing the relevant information to the District; or
2. The employee is exercising a protected legal right not to disclose the relevant information to the District as the individual's employer. Stated another way, this uncommon exception would apply only if a state or federal law grants the employee an affirmative and protected legal right to refrain from disclosing the relevant information to the District in spite of the District's general rule and expectation requiring such disclosure.

In addition, a state law, federal law, or separate District policy may independently require an employee to report some of the circumstances and possible misconduct/violations covered by this policy to an appropriate District official even when the employee has **not** otherwise engaged in protected participation or otherwise made a protected report to an external governmental official or entity.

In any situation where intra-District reporting is neither (1) prohibited by law nor (2) mandated by any law or any District policy, disclosing information or concerns about potential safety issues or possible violations, misconduct, or improprieties to appropriate District officials is permissible and encouraged.

Unless more specific reporting procedures are supplied by law or by a separate District policy or procedure (e.g., in the District's nondiscrimination policies and procedures), the District's expectation is that such intra-District reports will be

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clearly and directly communicated to ~~the employee's supervisor, another responsible administrator,~~ the District Administrator or to another administrator who is responsible for the applicable activity, program, or operational area. However, if the report concerns possible misconduct by the District Administrator or if the District Administrator would otherwise be affected by a conflict of interest in the matter, then the report or concern shall be submitted to a different administrator who is responsible for the applicable activity, program, or operational area and/or to the School Board President.

Therefore, it is strongly recommended that the employee make such a report in writing and/or that the employee ensures that he or she receives written confirmation from a District official that the report was made and received as intended. In directing employees to make the intra-District reports referenced in this paragraph policy, the District shall in no way prevent or interfere with an employee making a protected report to any external governmental official or entity that has authority or responsibilities regarding the matter in question.

Upon receiving any such intra-District report, District supervisors, administrators, and Board members must evaluate potential legal obligations to report or otherwise disclose information about possible violations or alleged misconduct to relevant state and/or federal authorities.

~~Protected Reports.~~ A protected report includes any report, complaint, or request for an official internal or external investigation that is made (1) (a) to the employee's immediate supervisor, (b) the principal, (c) the District Administrator, or (d) if the complaint is about the District Administrator, to the Board President; (2) using established District complaint procedures; (3) to a state or federal regulatory agency (e.g., the U.S. Department of Education or another federal agency's Office of Inspector General in any matter involving federal programs or federal funds, the Wisconsin Department of Public Instruction, etc.); (4) to a state or federal law enforcement agency (including the Wisconsin Attorney General); (5) a member of Congress in any matter involving federal programs or federal funds; or (6) to any court or grand jury. A protected report may involve or relate to the conduct of any person, including District employees, Board members, volunteers, consultants, vendors, contractors, or other parties maintaining any business or programmatic relationship with the District.

~~Assistance of Legal Counsel.~~ With notice to the Board, either the District Administrator or the Board President may engage the assistance of District legal counsel in connection with addressing any report, investigation, or legal proceeding related to a report or other allegation of any of the improprieties addressed under this policy. Refer to School Board Policy 142.

~~Other Protections.~~ The failure to expressly list in this policy any activity that is similarly protected from retaliation or discrimination under any state or federal law or under another Board policy is not intended to diminish such separately-established protection. With respect to federal programs, federal contracts, and federal funds, this policy is intended and shall be interpreted to provide the full protections required under 41.U.S.C. § 4712 and 2 C.F.R. § 200.217.

### Legal References:

#### Wisconsin Statutes

Section 101.055(8) [public employee safety and health; including employee protections]  
 Section 102.35(2) [prohibited retaliation and discrimination in connection with respect to workers compensation claims]

#### Federal Law

2 C.F.R. §200.300 [federal Uniform Guidance regulation referencing statutory requirements for whistleblower protections]  
 2 C.F.R. §200.113 [in connection with federal funding, mandatory disclosures of credible evidence of the commission of a violation of certain federal criminal laws or the civil False Claims Act]  
 2 C.F.R. §200.217 [federal OMB Guidance regulation addressing whistleblower protections]  
 31 U.S.C. §3729 et.sea. [federal False Claims Act]

41 U.S.C. §4712 [federal whistleblower protections applicable to employees of federal contractors and employees of recipients of federal funding initially effective through July 2017]

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