



### **POLICY 3.28**

**4-D** I recommend that the Board adopt the proposed revised Policy 3.28, entitled "Whistleblower Protection Policy."

[Contact: Elizabeth McBride, PX 47673.]

#### **Adoption**

#### **CONSENT ITEM**

- The Board approved development of this revised Policy at the development reading on November 2, 2011.
- The revised policy establishes procedures to ensure the District's compliance as contemplated under the Florida's Public Whistleblower's Act, Sec. 112.3187, Fla. Stat. This policy is not a vehicle for protesting a performance evaluation, making a complaint against a fellow employee, or otherwise disputing or disagreeing with management decisions.
- The policy provides for the Inspector General to be the locally designated official for the receipt and investigation of whistleblower complaints. See section 2(g). It further requires the Inspector General to establish a hotline as an additional means to receive complaints. See section 4.
- The purpose of this policy is to establish a procedure to provide employees, contractors, vendors, employees and students the ability to disclose violations of law, School Board Policy, or acts of gross mismanagement, malfeasance, misfeasance or gross waste of public funds.
- The revised policy prohibits an employee to use his/her authority or position to prohibit an individual from making a protected disclosure, or to engage in acts of reprisal, retaliation or threats due to one making a disclosure protected by the Florida's Public Whistleblower's Act.
- The Inspector General shall determine issues of timeliness and where warranted, investigate complaints from any person alleging adverse personnel action based upon the reporting of a protected disclosure. Investigations shall be completed within ninety (90) days of receipt of a complaint and a written report of findings shall be made to the Superintendent. See section 5. The Superintendent will communicate a decision to the complainant and the person(s) accused of violating this policy. See section 6.
  - If the complaint relates to allegations against an employee who reports to the Board, the Inspector General shall present the findings to the Board.

- Anonymous complaints or reports may be made; however, such complaints or reports must provide sufficient corroborating evidence to justify the commencement of an investigation. See section 5(c).
- This policy protects employees who initiate such complaints or who participate in an investigation or hearing related to such complaints, and those who engage in good faith reporting. See sections 7 and 8.

POLICY 3.28

1 WHISTLEBLOWER PROTECTION POLICY  
2 ADVERSE PERSONNEL ACTION AGAINST EMPLOYEE/INDEPENDENT  
3 CONTRACTOR  
4

- 5 1. Purpose and Intent. The purpose of this policy is to establish a procedure to  
6 provide employees with the protection contemplated by Florida's Public  
7 Whistleblower's Act, Sec. 112.3187, Fla. Stat. This Policy shall be known and  
8 may be cited as the "Whistleblower's Protection Policy."

9 This policy is not a vehicle for protesting a performance evaluation, making a  
10 complaint against a fellow employee, or otherwise disputing or disagreeing with  
11 management decisions. In such cases, employees must respect and use the  
12 established organizational lines of authority, communication and grievance  
13 processes. It is the intent of this policy to protect an employee who engages in  
14 good faith reporting from reprisal by adverse employment action or other retaliation  
15 as a result of having disclosed wrongful conduct, and to provide employees who  
16 believe they have been subject to reprisal or false allegations a fair process to seek  
17 relief from such acts. Any communication that proves to have been  
18 unsubstantiated and made with malice or with knowledge of its falsity is not  
19 protected by this policy.

- 20 2. Definitions: As used in this section, the following words or terms shall have the  
21 meanings indicated:

22 a. "Employee" means any person hired by the School Board after completing the  
23 personnel procedures required by the School Board.

24 b. "Independent Contractor" means any person ~~or company~~ other than ~~a~~ the  
25 School Board or its employees, who provides goods and/or services to the  
26 School Board pursuant to and enters into a contractual agreement, including a  
27 provider agreement, with the School Board.

28 c. "Adverse personnel action" means the discharge, suspension, transfer,  
29 demotion, reprimand, warning, withholding of bonuses, the reduction of salary  
30 or benefits, or any other adverse action taken against an employee within the  
31 terms and conditions of employment by the School Board, ~~or, debarment,~~  
32 ~~suspension, cancellation of contract of an independent contractor.~~

33 d. "Protected disclosure", according to the Florida's Public Whistleblower's Act,  
34 is the good faith reporting of:

35 i. Any violation or suspected violation of any federal, state, or local law,  
36 rule, or regulation, or Board policy or procedure, committed by an

37 employee(s), agent(s) or an independent contractor(s) of the Board which  
38 creates and presents a substantial and specific danger to the public's or  
39 students' health, safety, or welfare; or

40 ii. Any act or suspected act of gross mismanagement, malfeasance,  
41 misfeasance, gross waste of public funds, suspected or actual Medicaid  
42 fraud or abuse, or gross neglect of duty committed by an employee, agent  
43 or independent contractor of the Board.

44 e. "Gross mismanagement" means a continuous pattern of managerial abuses,  
45 wrongful or arbitrary and capricious actions, or fraudulent or criminal conduct  
46 which may have a substantial adverse economic impact.

47 f. "Whistleblower" means a person or entity making a protected disclosure. A  
48 whistleblower may be an employee, students, parents, vendors, contractors,  
49 applicants for employment, or the general public who makes a good faith  
50 report. The whistleblower's role is as a reporting party. Whistleblowers are not  
51 investigators or finders of fact, nor do they determine the appropriate  
52 corrective or remedial action that may be warranted.

53 g. "Locally Designated Official", for the purposes of this policy, shall mean the  
54 Inspector General of the Board who is designated as the official with primary  
55 responsibility to receive reports of allegations of whistleblower's conduct.

56 3. **Policy Statement.** The School Board encourages its employees, students, parents,  
57 contractors, volunteers and others members of the public, acting in good faith, to  
58 report to the Inspector General actions of employees or contractors which  
59 constitute suspected or actual violations as outlined in the definition of "protected  
60 disclosures" as provided for in Section 2(d). of this policy. If such report concerns  
61 the conduct of the Inspector General, it should be filed with the Chair of the School  
62 Board and Superintendent.

63 a. ~~4.~~ Neither the School Board, Superintendent, Department Heads, nor  
64 Principals nor any employee shall take or recommend to the School Board to  
65 take adverse personnel actions against an employee for disclosing information  
66 pursuant to the provisions of this policy..

67 b. Employees may not directly or indirectly use or attempt to use the official  
68 authority or influence of his or her position or office to interfere with the right of  
69 a person to provide information as provided in the definition of "protected  
70 disclosure", or intentionally engage in acts of reprisal, retaliation, threats,  
71 coercion or similar acts against a person as a result of his or her providing, or  
72 attempting to provide, such information. ~~5. Neither the Superintendent~~  
73 ~~nor the School Board shall take any adverse personnel action that affects the~~  
74 ~~rights or interests of an independent contractor in retaliation for the~~  
75 ~~contractor's disclosure of the information under this policy.~~

- 76 c. Any person may file a complaint with the Inspector General of any acts  
77 meeting the definition of "protected disclosure" as provided herein. Although  
78 reports are encouraged to be made in writing so as to assure a clear  
79 understanding of the issues raised, reports may be made orally as well as  
80 anonymously.
- 81 4. Implementation of a Report Hotline. In addition to accepting written  
82 complaints, the Inspector General shall implement a Hotline with a dedicated  
83 telephone number and a website for the reporting of complaints. The Hotline is  
84 available for any person (both identified and anonymous) wishing to report a  
85 protected disclosure as defined herein.
- 86 a. ~~4. The provisions of this policy shall not be applicable when an employee or~~  
87 ~~independent contractor discloses information known to be false.~~
- 88 b. ~~5. The information disclosed under this section shall include reporting of any~~  
89 ~~violation or suspected violation of federal, state or local laws, School Board~~  
90 ~~policy or Administrator's Directive by a School Board member, employee, or~~  
91 ~~independent contractor which presents a substantial and specific danger to~~  
92 ~~interests of the School Board. Additionally, information disclosed, which~~  
93 ~~indicates acts or suspected acts of malfeasance, misfeasance, gross waste of~~  
94 ~~funds or neglect of duty committed by an agency, shall be included.~~
- 95 5. Investigation of Complaints
- 96 a. The Inspector General shall determine issues of timeliness and where  
97 warranted, investigate complaints from any person alleging adverse personnel  
98 action based upon the reporting of a protected disclosure. Any warranted  
99 investigations shall be completed within ninety (90) days of receipt of a  
100 complaint and a written report of findings shall be made to the Superintendent.  
101 The final report shall include:
- 102 i. A statement of the complaint upon which the investigation was initiated;
- 103 ii. A summary of the findings of the investigation;
- 104 iii. A listing of any violation of law(s) or other act(s) found which are  
105 "protected disclosures" as defined herein;
- 106 iv. A listing of recommendations, including but not limited to recommended  
107 disciplinary actions; referral to any appropriate law enforcement agency, if  
108 it appears that a crime has been committed; or restorations to the  
109 employee experiencing an adverse personnel action; and
- 110 v. Any other information the Inspector General determines to be pertinent to  
111 the investigation.

112 b. An investigation shall be closed when it is determined by the Inspector  
113 General that an investigation is complete or that one is not warranted. Upon  
114 such determination, the investigation shall provide written notice to the  
115 Superintendent and the individual making the disclosure.

116 c. Anonymous complaints or reports may be made; however, such complaints or  
117 reports must provide sufficient corroborating evidence to justify the  
118 commencement of an investigation. Anonymous complaints will be reviewed  
119 to determine whether there is a sufficient, factual basis to reasonably suspect  
120 that a violation as outlined in the definition of "protected disclosures" may have  
121 occurred.

122 ~~The information shall be disclosed to the appropriate entity having the authority to~~  
123 ~~investigate, police, manage, or otherwise remedy the violation or act.~~

124 6. Superintendent's Decision. Upon the Inspector General's presentation of  
125 findings to the Superintendent, the Superintendent shall reach a decision regarding  
126 the complaint and shall communicate the decision to the complainant and the  
127 person(s) accused of violating this policy.

128 a. Exception. If the complaint relates to allegations against an employee who  
129 reports to the Board, the Inspector General shall present the findings to the  
130 Board and Superintendent.

131 7. Protection from Adverse Personnel Action or Retaliation. This policy protects  
132 employees and other persons who disclose information on their own ~~volition~~ motive  
133 in a written and signed complaint with the Inspector General, who initiates a  
134 complaint through the Inspector General's Hotline, or who are requested to  
135 participate in an investigation, hearing or other inquiry conducted by the  
136 Superintendent, School Board, state agency or federal government.

137 a. Investigation of Employees' Complaints. An employee, whistleblower who  
138 believes that she or he has been retaliated against or had adverse action  
139 taken against him or her shall file a written complaint with the Office of  
140 Inspector General within thirty (30) working days of the alleged retaliation.  
141 Any complaint of adverse personnel action or retaliation will be promptly  
142 investigated by the Office of Inspector General and receipt of same shall be  
143 acknowledged within five (5) business days. If the employee's allegations of  
144 adverse personnel action or retaliation are substantiated, appropriate  
145 corrective measures shall be taken by the Superintendent, Board or  
146 Department Head.

147 b. Consequences to Employees Engaging in Adverse Action or Retaliation. An  
148 employee who takes adverse personnel action or retaliates against someone  
149 who reported a concern in good faith is subject to discipline up to and  
150 including termination of employment.

151 8. Acting in Good Faith. Anyone making a reporting as provided in this policy  
152 must act in good faith and have reasonable grounds for believing the information  
153 disclosed is a violation of law or an act as defined herein by "protected disclosure".  
154 Thus, this policy does not immunize an employee, volunteer or student from the  
155 consequences of his/her own actions, which actions do not constitute reasonable  
156 and good faith disclosure of the type of information described herein. Allegations  
157 that are not substantiated, yet are made in good faith are not subject to corrective  
158 action.

159 a. Employee or Volunteer. Any employee or volunteer who knowingly or with  
160 reckless disregard for the truth gives false information or knowingly makes a  
161 false report of wrongful conduct or a subsequent false report of retaliation will  
162 be subject to disciplinary action, up to and including termination.

163 b. Student. Any student who knowingly makes a false report may be subject to  
164 the student code of conduct.

165 9. Rights of Employees Subject to Adverse Actions. Any employee subject to  
166 adverse personnel based upon the decision of the Superintendent may take action  
167 as provided in this subsection within thirty (30) days of the employee's receipt of  
168 the Superintendent's communication. The employee shall: ~~Any employee who is~~  
169 subject to adverse personnel action has a right to:

170 a. File a grievance pursuant to the employee's applicable collective bargaining  
171 agreement, if the employee is a member of a bargaining unit ~~or Policy 3.34.~~,  
172 or file an action pursuant to Chapter 120, Florida Statutes; or

173 b. File an action pursuant to Chapter 120, Florida Statutes, if the employee is not  
174 a member of a bargaining unit.

175 ~~An independent contractor may appeal to the School Board for administrative~~  
176 ~~review.~~

177 10. Confidentiality. Protected disclosures and investigatory records will be kept  
178 confidential to the extent possible, consistent with the need to conduct an adequate  
179 investigation, to provide accused individuals their rights and to comply with the  
180 Florida Public Records Act.

181 STATUTORY AUTHORITY: Fla. Stat. §§ ~~230.22~~, 1001.41, 1001.42, 1012.22, 112.3187

182 LAWS IMPLEMENTED: Fla. Stat. §§ ~~230.23~~, 1012.22, 120.569, 120.57, 447.401

183 HISTORY: 9/16/92; \_\_/\_\_/2011

Legal Signoff:

The Legal Department has reviewed proposed Policy 3.28 and finds it legally sufficient for adoption by the Board.

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Attorney

\_\_\_\_\_  
Date

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