



POLICY 3.28

5-D I recommend that the Board approve development of the proposed **revised** Policy 3.28, entitled "Whistleblower Protection Policy."

[Contact: Elizabeth McBride, PX 47673.]

Development

CONSENT ITEM

- 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. See section
- 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

WHISTLEBLOWER PROTECTION POLICY
ADVERSE PERSONNEL ACTION AGAINST EMPLOYEE/INDEPENDENT CONTRACTOR

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

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. In such cases, employees must respect and use the established organizational lines of authority, communication and grievance processes. It is the intent of this policy to protect an employee who engages in good faith reporting from reprisal by adverse employment action or other retaliation as a result of having disclosed wrongful conduct, and to provide employees who believe they have been subject to reprisal or false allegations a fair process to seek relief from such acts. Any communication that proves to have been unsubstantiated and made with malice or with knowledge of its falsity is not protected by this policy.

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

- a. "Employee" means any person hired by the School Board after completing the personnel procedures required by the School Board;
 - b. "Independent Contractor" means any person ~~or company~~ other than ~~a—the~~ the School Board ~~or its~~ employees, who provides goods and/or services to the School Board ~~pursuant to and enters into~~ a contractual agreement, including a provider agreement, with the School Board;
 - c. "Adverse personnel action" means the discharge, suspension, transfer, demotion, reprimand, warning, withholding of bonuses, the reduction of salary or benefits, or any other adverse action taken against an employee within the terms and conditions of employment by the School Board, ~~or, debarment, 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

nor the School Board shall take any adverse personnel action that affects the rights or interests of an independent contractor in retaliation for the 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 occurrence of the
141 alleged retaliation. Any complaint of allegations of adverse personnel action
142 or retaliation will be promptly investigated by the Office of Inspector General
143 and receipt of same shall be acknowledged within five (5) business days, if the
144 employee's allegations of adverse personnel action or retaliation are

145 substantiated, appropriate corrective measures shall be taken by the
146 Superintendent, Board or 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 3.31.~~,
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 development by the Board.

Attorney

Date