

POLICY GBKA

Related Entries: GBKA-R, DIB
Responsible Office: Chief Human Resources Officer

REPORT OF ILLEGAL OR IMPROPER CONDUCT

I. PURPOSE

To provide a means for employees of Las Cruces Public Schools to report instances of illegal or improper conduct; and, to inform employees who make such reports of the protections afforded to them.

II. BACKGROUND

The Board of Education expects all school district employees to uphold the public's trust, to conduct themselves in an honorable manner, and to abide by all school district policies and regulations and all applicable state and federal laws and regulations. Further, the board is committed to the efficient and proper use of all public funds, §10.16.1-10.16.18, NMSA 1978.

The Board of Education is committed to the efficiency and legal use of district resources. The theft or misuse of district's assets reduces the availability of resources for the district's instructional programs.

III. DEFINITIONS

1. *"Good faith"* means that a reasonable basis exists in fact as evidenced by the facts available to the public employee.
2. *"Public employee"* means a person who works for or contracts with a public employer.
3. *"Retaliatory action"* means taking any discriminatory or adverse employment action against a public employee in terms and conditions of public employment.
4. *"Unlawful or improper act"* means a practice, procedure, action or failure to act on the part of a public employer that:
 - a. Violates a federal law, a federal regulation, a state law, a state administrative rule or a law of any political subdivision of the state;
 - b. Constitutes malfeasance in public office; or
 - c. Constitutes gross mismanagement, a waste of funds, an abuse of authority or a substantial and specific danger to the public.

5. “*Wrongful conduct*” means theft of school district money, property or resources; misuse of authority for personal gain or other non-school district purpose; fraud; financial improprieties; mismanagement of school district resources, including accounting and auditing matters; ethical violations; violations of applicable federal and/or state laws and regulations; and/or serious violations of school district policy and/or regulation.
6. “*Whistleblowing*” means the disclosure by any school district employee of some wrongful conduct connected with the work place on the part of any other school district employee or officer of the school district.
7. “*Resources or Assets*” means all items of value for District use to include, but not limited to, cash, temporary investments, real property, equipment, and bandwidth and personnel time.

IV. POSITION

- A. As defined in state statute, 10-16C-1 NMSA 1978, the Whistleblower Protection Act, the school district shall prohibit retaliation by or on behalf of the school district against any school district employee who acts as a “whistleblower” and makes a good faith report of any wrongful conduct. As such, the Las Cruces Public Schools shall not take any retaliatory action against an employee because the employee:
 1. Communicates to the public employer or a third party information about an action or a failure to act that the public employee believes in good faith constitutes an unlawful or improper act;
 2. Provides information to, or testifies before, a public body as part of an investigation, hearing or inquiry into an unlawful or improper act; or
 3. Objects to or refuses to participate in an activity, policy or practice that constitutes an unlawful or improper act.
- B. All school district employees who know of, or have reasonable cause to believe that, any other school district employee, regardless of position, has engaged in any wrongful conduct in connection with the work place, shall immediately report such wrongful conduct to his/her immediate supervisor or to the Superintendent or designee.
- C. Upon receiving any report of wrongful conduct, the Superintendent, or designee, shall take immediate steps to investigate the report.
- D. As provided for in state statute (10-6C-6 NMSA 1978):
 1. A public employer that violates the provisions of the Whistleblower Protection Act shall be liable to the public employee for actual damages, reinstatement with the same seniority status that the employee would have had but for the violation, two times the amount of back pay with interest on the back pay and compensation for any special damage sustained as a

result of the violation. In addition, an employer shall be required to pay the litigation costs and reasonable attorney fees of the employee.

2. It shall be an affirmative deference to a civil action brought pursuant to this section that the action taken by a public employer against a public employee was due to the employee's misconduct, the employee's poor job performance, a reduction in work force or other legitimate business purposes unrelated to conduct prohibited pursuant to the Whistleblower Protection Act and that retaliatory action was not a motivating factor.
 3. The remedies provided for in the Whistleblower Protection Act are not exclusive and shall be in addition to any other remedies provided for in any other law or available under common law.
 4. Nothing in the Whistleblower Protection Act precludes civil actions or criminal sanctions for libel, slander, or other civil or criminal claims against a person who files a false claim under that act.
 5. A civil action pursuant to the Whistleblower Protection Act shall be forever barred unless the action is filed within two years from the date on which the retaliatory action occurred
- E. The District shall keep posted in a conspicuous place in all district facilities and offices notices that set forth the provisions of the Whistleblower Protection Act.
- F. The Superintendent of Schools shall promulgate a regulation for the enforcement of this policy.

V. REVIEW

This policy shall be reviewed on an ongoing basis in accordance with the Board of Education policy review process.



Board of Education, President

August 20, 2019

Date Approved

Legal reference: NMSA 1978 10.16C-1 through 10-16C-6; Freedom of Information Act ("FOIA"), MCL 15,231 et seq.; Family Educational and Privacy Rights Act ("FERPA"), 20 U.S.C. 1232; Contracts of Public Servants with Public Entities Act 317 of 1968 (MCL 15.321-15.330); Section 75-b of the Civil Service Law; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-3(a); Age Discrimination in Employment Act, 29 U.S.C. §623 (d); Americans with Disabilities Act, 42 U.S.C. §12203(a) and (b); Fair Labor Standards Act, 29 U.S.C. §215(a)(3); Occupational Safety and Health Act, 29 U.S.C. §6660(c); Family and Medical Leave Act, 29 U.S.C. §2615; National Labor Relations Act, 29 U.S.C. §158(a).

History: New policy 11.13.12, Revised August 2019