

WHISTLEBLOWING AND REPORTS OF SUSPECTED UNLAWFUL OR IMPROPER CONDUCT

General Principles

It is the policy of the District to encourage District employees, applicants for District employment, District volunteers, and District contractors and vendors (including persons and entities who have responded to a Request for Proposals or a Request for Quotations) to report suspected unlawful and other improper conduct, including violation of law and of District Board Policy, on the part of a District employee, volunteer, contractor, vendor, or trustee, without fear of retaliation.

Furthermore, it is the policy of the District that all such reports of unlawful or improper conduct be investigated promptly and thoroughly, and that remedial action be taken as appropriate.

Anyone who makes a good-faith report of suspected unlawful or other improper conduct, and who is not involved in the wrongdoing, shall be free from retaliation.

Additionally, a District employee may not use, or attempt to use, his or her authority for the purpose of interfering with the right of another person to report unlawful or other improper conduct. To illustrate, such prohibited interference may take the form of promising to confer or conferring a benefit, or taking or recommending personnel action such as regarding employee appointment, promotion, transfer, assignment, performance evaluation, or discipline.

Any such retaliation, or interference with making a report, shall result in appropriate consequences.

This Policy covers both reports of what is commonly referred to as “whistleblowing,” as set forth in the following section, as well as reports of other suspected wrongdoing, as set forth in the third section of this Policy.

Whistleblowing

The provisions of various “whistleblowing” laws, including the California Reporting by School Employees of Improper Governmental Activities Act (“the Act”), *Education Code* §§ 44110 *et seq.* and *Labor Code* § 1102.5, are incorporated into this Policy, and are summarized herein. These laws also provide for criminal and civil penalties in certain circumstances.

Pursuant to the Act, District employees and applicants for District employment are encouraged to make reports of conduct which either:

- (a) “violates a state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to

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perform duty;” or

(b) “is economically wasteful or involves gross misconduct, incompetency, or inefficiency.”

The Act provides protections for individuals who make a good faith report of such conduct. The Act also provides protections for individuals who make a good faith report of retaliation for having made such a report; or of retaliation for having refused to comply with an illegal directive to violate law or which would unreasonably threaten the health or safety of others.

Moreover, under *Labor Code* § 1102, a District employee may not be prevented from making a report of an alleged violation of law, regardless of whether disclosing the information is part of the employee's job duties.

Other Suspected Improper Conduct

There already are existing mechanisms for the reporting of various forms of improper conduct, pursuant to Board Policy and law, and these policies and procedures should be utilized whenever applicable.

BP 1312.1 – Complaint Procedures

BP 4031 – Complaints Concerning Discrimination in Employment

BP 4119.11 – Sexual Harassment

BP 5183 – Sexual Harassment

Members of the District’s bargaining units may file Grievances pursuant to the terms of their respective collective bargaining agreements.

Otherwise, for reports of alleged violations of this Policy, the procedures set forth in the following section should be utilized.

Reports and Investigations

District employees, applicants for District employment, District volunteers, and District contractors and vendors are encouraged to report suspected unlawful and other improper conduct using procedures set forth in existing District policies and procedures when applicable. For reports of alleged violation of this Policy for which no District existing policy or procedure is applicable, reports and investigations shall be governed by this Policy, as detailed below.

Reports from employees or volunteers generally should be made to the immediate supervisor of that employee or volunteer. Reports from applicants for District employment generally should be made to the Assistant Superintendent, Personnel Services. Reports from contractors or

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vendors generally should be made to the Deputy Superintendent. If the individual to whom the report is to be made is suspected to be involved in the alleged wrongdoing, then the report is to be made to the next person up on the organizational chart. If the Superintendent or a trustee is suspected to be involved in the alleged wrongdoing, the report is to be made to the Board.

In order to further encourage such reports, the individual reporting the suspected wrongdoing shall have the option of making his or her report to an independent attorney, reporting directly to the Board (“Board Attorney”) who shall be under contract with the District, on an annual basis, to be available to receive such reports. For each such report, the Board Attorney shall make a recommendation to the Board, as appropriate, regarding how the report should be investigated and by whom. The Board Attorney shall have an attorney-client relationship with the Board, and communications between the Board Attorney and the Board shall be protected from disclosure by the attorney-client privilege. The Board Attorney shall have no professional involvement or engagement with the District except as provided in this Policy.

As appropriate, reports of suspected unlawful conduct also can be reported to governmental agencies which can include, depending on the nature of the specific allegation, the California Department of Fair Employment and Housing, the U.S. Equal Employment Opportunity Commission, California Department of Education, the Orange County Department of Education, the Orange County District Attorney, the Orange County Grand Jury, and local police agencies.

Reports should be made as soon as possible. Depending on the circumstances, certain statutes of limitations may apply as a matter of law.

All reports shall be investigated promptly and thoroughly.

This Policy does not authorize the disclosure of information or documentation otherwise prohibited from disclosure by law. To the extent practical, and subject to legal requirements, the person making the report shall be advised of the outcome of the investigation.

At the discretion of the Superintendent, the Board, or the Board Attorney, depending on who is the recipient of the report, and depending on the seriousness, complexity, and sensitivity of the allegations, the investigation shall be conducted by a District administrator, by an independent investigator, or by the Board Attorney.

As deemed necessary, a hearing panel can be convened to adjudicate investigative findings.

BP 2250 – Hearing Panels.

To the extent practical, and subject to legal requirements, reports made hereunder, as well as

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related documents and information, shall be kept confidential, and the identity of the reporting individual shall not be disclosed.

The Superintendent shall keep the Board of Trustees regularly informed, on at least a quarterly basis, of reports submitted under this Policy along with the investigatory findings. The Board may consider such reports in Closed Session when permitted under the Brown Act.

The Superintendent shall develop a Report Form to implement this Policy.

Policy
adopted: October 14, 2015

CAPISTRANO UNIFIED SCHOOL DISTRICT
San Juan Capistrano, California