

Policy GBCBB: PROTECTED STAFF COMMUNICATIONS

Status: DRAFT

Original Adopted Date: 12/18/2019

25A UPDATE EXPLANATION

MSBA has updated this policy to reflect changes to the U.S. Code of Federal Regulations. The U. S. Office of Management and Budget (OMB) emphasized protections for federal programs whistleblowers by adding them to the 2024 OMB rewrite of the Code of Federal Regulations, Title II, Part 200, Subpart C, Pre-Federal Award Requirements and Contents of Federal Awards. MSBA now recommends districts add this new section on protected communications.

The district respects the opinions of district employees and will not take action against district employees solely for speech that is protected by state or federal law. The superintendent or designee may contact the district's attorney prior to taking disciplinary action to ensure compliance with these laws.

While there are numerous statutes, constitutional provisions, and court cases on this subject, this policy is intended to address only the requirements of § 105.055, RSMo.

Definitions

Disciplinary Action – Any dismissal, demotion, transfer, reassignment, suspension, reprimand, warning of possible dismissal, or withholding of work, regardless of whether the withholding of work has affected or will affect a district employee's compensation.

District Employee – Any employee, volunteer, intern, or other individual performing work or services for the district.

Employee Responsibilities

The district encourages district employees to be mindful of the impact their communication may have on the school district community and expects employees to take responsibility for their own communications regardless of whether the communication occurs while off duty or working. District employees are prohibited from representing their opinions as those of the district and are required to clarify, when necessary, when they are speaking as an individual and not as a representative of the district. All communications made by an employee while working for or representing the district must be professional.

Protected Communications

District administrators or supervisors will not prohibit an employee from discussing the operations of the district, either specifically or generally, with any member of the legislature, the state auditor, the attorney general, a prosecuting or circuit attorney, a law enforcement agency, the news media, members of the public, or any state official or body charged with the investigation of misconduct listed in this policy unless allowed by law.

Unless a disclosure is prohibited by law, neither the district nor its administrators and supervisors will prohibit a district employee from, or take disciplinary action against a district employee for, disclosing an alleged prohibited activity under investigation, any related activity, or any information the district employee reasonably believes to be evidence of:

1. A violation of any law, rule, or regulation;
2. Mismanagement;
3. A gross waste of district funds;
4. An abuse of authority;
5. Any violation of district policy;
6. A waste of public resources;
7. Any alteration of technical findings or communication of scientific opinion;

8. A breach of professional ethical canons; or
9. A substantial and specific danger to public health or safety.

All district employees and volunteers who have reasonable cause to suspect fraud must immediately report that suspicion to an administrator or supervisor pursuant to policy DA.

No administrator or supervisor shall require a district employee to provide notice prior to disclosing any activity listed above or prevent a district employee from testifying before a court or an administrative or legislative body regarding any alleged prohibited activity or disclosure of information.

Protected Communications Regarding Federal Programs

District employees will not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant, to:

1. A member of Congress or a representative of a committee of Congress;
2. An inspector general;
3. The Government Accountability Office;
4. A federal employee responsible for contract or grant oversight or management at the relevant agency;
5. An authorized official of the Department of Justice or other law enforcement agency;
6. A court or grand jury; or
7. A management official or other employee of the contractor, subcontractor, grantee, subgrantee, or personal services contractor who has the responsibility to investigate, discover, or address misconduct.

Employees who believe that they have been subjected to a prohibited reprisal may submit a complaint to the inspector general of the federal executive agency involved.

Requests for Information and Testimony

In general, and in accordance with law, the district will comply with legislative requests for information as well as any requests for information by a court or other legislative body. Likewise, the district will cooperate in situations where a court or legislative body seeks district employee testimony regarding any alleged prohibited activity.

District employees who receive a legislative request for information are required to inform district administrators or supervisors. District employees are also required to provide district administrators or supervisors information regarding the substance of any testimony the district employee makes to legislators on behalf of the district.

Leaving Work Areas

District employees are required to follow all applicable rules and supervisor instructions regarding attendance. A district employee may not leave assigned work areas during normal work hours to discuss district operations or to make protected disclosures under this policy, particularly in situations where students would be left unsupervised, unless the employee:

1. Is reporting suspected child abuse or neglect;
2. Is asked by a legislator or legislative committee to appear before a legislative committee;
3. Is otherwise entitled by law or as part of ~~his or her~~ their duties to leave the assigned work area; or
4. Has requested and received permission from an administrator or supervisor to be relieved of ~~his or her~~ their

job duties for the purposes of reporting misconduct to the appropriate district authority. Such requests will be granted as soon as practical given the nature of the employee's job duties.

Unprotected Communications

Regardless of any protections afforded in this policy, a district employee may be disciplined for communicating information if the employee knew the information was false; if the information was disclosed in violation of the Missouri Sunshine Law or any other law; or if the disclosure was related to the employee's own violations, mismanagement, gross waste of funds, abuse of authority, or endangerment of public health or safety.

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Policy Reference Disclaimer: These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State

§ 210.115, RSMo.

Description

[State Statute](#)

§ 610.010, RSMo.

[State Statute](#)

Federal

2 C.F.R. § 200.217

Description

[Federal Programs Whistleblower Protections](#)

20 U.S.C. § 1232g

[Family Educational Rights and Privacy Act](#)

20 U.S.C. § 1400-1417

[Individuals with Disabilities Education Act](#)

29 U.S.C. §§ 2611-2619

[Family and Medical Leave Act](#)

41 U.S.C. § 4712

[Protection from Reprisal for Disclosure of Certain Information](#)

42 U.S.C. §§ 12101-12213

[Americans with Disabilities Act](#)

7 C.F.R. Part 210 et seq.

[National School Lunch Program](#)

FEDERAL COURT

[Pickering v. Board of Education, 391 U.S. 563 \(1968\)](#)

FEDERAL COURT

[Connick V. Meyers, 461 U.S. 138 \(1983\)](#)

FEDERAL COURT

[Garcetti v. Ceballos, 547 U.S. 410 \(2006\)](#)

Cross References

BDC

Description

[CLOSED MEETINGS, RECORDS, AND VOTES](#)

DA

[FISCAL RESPONSIBILITY](#)

JHG

[REPORTING AND INVESTIGATING CHILD ABUSE AND NEGLECT](#)

JO-1

[STUDENT RECORDS](#)

JO-1-AP(1)

[STUDENT RECORDS - \(K-12 Districts\)](#)

JO-1-AP(2)

[STUDENT RECORDS - \(Disclosure of Photographs, Images and Recordings Maintained by the District\)](#)

KL

[PUBLIC CONCERNS AND COMPLAINTS](#)

KLA

[CONCERNS AND COMPLAINTS REGARDING FEDERAL PROGRAMS](#)