REPORTING IMPROPER GOVERNMENTAL ACTION AND PROTECTING EMPLOYEES AGAINST RETALIATION (DISTRICT WHISTLEBLOWER POLICY)

9645.00 STATEMENT OF POLICY

9645.01 General Policy

The District can achieve its mission best if it is made aware of potential improper governmental action and has the opportunity to investigate and fix problems. That goal is served when District employees know that they can raise concerns without concern that they might be penalized for sharing such information. The interests of the District (knowledge and opportunity to correct) and those of employees (freedom from fear of retaliation) are interconnected.

It is the policy of the Board of Education to (1) encourage employees, acting in good faith, to report what the employee reasonably believes to be true and reasonably believes to be an improper governmental action or wrongdoing by District officers or employees; and (2) to protect District employees who, in good faith, have reported such improper governmental actions or wrongdoing in accordance with this policy. This policy is equitable in nature; therefore, a disclosure made by an employee which may reasonably be construed as an effort to exonerate the employee themselves, or to mitigate or prevent adverse disciplinary consequences for one's own wrongdoing shall not be accorded protection under this policy.

This policy supplements such additional protections as may be provided under New York State law for the protection of employees.

9645.02 Employee's Duty of Disclosure as Precondition to Whistleblower Protection

The District will not take adverse employment action against an employee who has, in good faith, notified the district and/or a governmental body of wrongdoing, including but not limited to instances where an employee has reported misconduct when mandated to do so by federal or state law or regulation (e.g., child abuse, state testing misconduct).

9645.10 DEFINITIONS

"***Improper Governmental Action***" for purposes of this policy means any action by a District officer or employee:

1. That is undertaken in the performance of the District officer's or employee's official duties, whether or not the action is within the scope of the officer or employee's employment; ***and***
2. That is (a) a violation of any federal, state or local law or regulation which creates and presents a substantial and specific danger to the public health or safety; or (b) is a substantial abuse of authority.

"Improper governmental action" for purposes of this policy does *not* include personnel actions taken in the course of conducting the District's business. Such matters, where employees believe themselves aggrieved, are most appropriately addressed by reference to the various collective bargaining agreements and by further reference to the protections afforded District employees under the Civil Service Law and/or the Education Law.

"***Retaliatory Action***" means any adverse personnel action or other action harmful to any person, taken knowingly and with the intent to retaliate, which is directly attributable to the making or support of a good faith report of improper governmental action; and which does not flow from an evaluation or assessment

of performance or nonperformance of the reporting or supporting employee's own work. The Board does not condone the use of this policy as a mechanism for avoiding or deflecting the consequences of an individual's own deficient work performance, and nothing in this policy is intended to interfere with legitimate employment decisions.

9645.20 PROTECTION OF EMPLOYEES & EMPLOYER

9645.21 Employee Protection

No Retaliation. The District shall not take any retaliatory action against any employee who in compliance with Section 9645.02, above, does any of the following:

Discloses, or threatens to disclose to the Board of Education or the Board's designee an activity, practice or procedure which he or she reasonably believes to violate a statute or regulation which violation creates and presents a substantial and specific danger to the public health or safety; or

a. Discloses, or threatens to disclose to the Board of Education or the Board's designee an activity, practice or procedure which he or she reasonably believes to violate a statute or regulation which violation creates and presents a substantial and specific danger to the public health or safety; or

b. Provides information to, or testifies before any public body (as defined in New York Labor Law § 740) that is conducting an investigation, inquiry or hearing into any such violation of a statute or regulation by the District; or

c. Objects to, or refuses to participate in any such activity, practice or policy in violation of a statute or regulation.

2. **Reasonable Confidentiality**. All reports under this policy will be handled with reasonable confidentiality; and personally identifiable information from the report will be shared only to the extent necessary to conduct a complete and fair investigation. Reporting to the Board designee, or to the Board of Education rather than to immediate supervisors is intended, in part, to increase the assurance of reasonable confidentiality and non-retaliation.

3. **Affirmative Defense**. Where an employee is subject to dismissal or other discipline under the disciplinary provisions of a collective bargaining agreement, under Education Law § 3020-a, or under Civil Service Law § 75, such employee may raise as an affirmative defense the claim that such action would not have been taken but for action protected by this Policy. If a court, arbitrator or hearing officer makes a finding that dismissal or other action is based *solely* upon a violation of this policy by the District, such fact finder may dismiss the disciplinary proceeding, and in the case of a member of a collective bargaining unit, may make such action as is permitted by the applicable collective bargaining agreement.

9645.22 Employer Protection

Nothing in this policy shall be deemed to diminish or impair the rights of the District to manage its employees under any statute, regulation, rule or collective bargaining agreement; nor to prohibit any personnel action which otherwise would have been taken regardless of the disclosure of information. It shall also be a defense to any action or proceeding commenced by an employee or former employee that a personnel action was predicated upon grounds other than the employee's exercise of any rights protected by this policy.

9645.30 RETALIATION & FALSE CLAIMS

Reasonable actions will be taken to prevent retaliation against anyone making a good-faith complaint of improper governmental action or who participates in investigations of such complaints. The District will investigate allegations of retaliation made by any complainant or witness. The District may take such steps as are reasonably appropriate to the findings of such investigations.

Where the District has reason to believe that a claim of improper governmental action or a claim of retaliation is false; or that a claim has been made in bad faith, or with a malicious intent, the District expressly reserves the right to make such inquiries as it deems appropriate, and to exercise its discretion regarding discipline or other consequences for assertion of a false or malicious claim.

This policy may not be invoked by any individual for purposes of avoiding adverse consequences for one's own actions, or for purposes of obtaining exoneration or mitigation of a disciplinary penalty for an improper governmental action to which the reporting person was a party. An employee wishing to receive the benefit of this policy must report improper governmental action to the appropriate District official promptly, and may not actively participate in such improper governmental action.

9645.40 ADMINISTRATIVE PROCEDURE

9645.41 Collective Bargaining & District Code of Conduct

The provisions of this policy shall be deemed to be independent of, and supplemental to, the provisions of collective bargaining agreements between the District and its unions relative to grievance procedures, and to terms and conditions of employment. Any employee discipline imposed under this policy upon an individual covered by a collective bargaining agreement will be done in a manner consistent with the discipline provisions of such agreement and subject to the grievance provisions of such agreement, unless a different approach is mandated by federal or state law or regulation. The foregoing shall not be construed, however, as a limitation upon the right of the District to pursue criminal law remedies when there is evidence of commission of a crime under federal or state law.

9645.42 No Special Duty Assumed by District.

This policy, and any administrative procedures adopted to implement it, are designed and intended to meet the requirements of federal and state law, and to provide the framework for the District's overall approach for the *collective* benefit of its students and employees. Nothing in this policy or in accompanying regulations shall be construed as limiting any interest or right of action available under federal or state law, nor shall this policy or accompanying regulations be deemed or construed to create or expand any new or additional interest or right of action in favor of any person or group. Nothing in this policy or accompanying regulations shall be deemed or construed to offer or promise a special duty of any nature or type to any individual or group, upon which such person or group may rely to their detriment. Nothing in this policy shall be deemed to require the District to compensate an employee for participation in any investigation, hearing or inquiry held by an appropriate authority (such issues being addressed exclusively by collective bargaining agreements or by the regulations applicable to the Superintendent, Board's Employee Group, or Exempt Group), nor does it impair the rights of any employee under a collective bargaining agreement.

Cross-ref: District Policy Prohibiting Discrimination or Harassment of Students or Employees (0100)
Development of Regulations (3310)

Ref: Education Law § 3020-a

New York Civil Service Law §75-b;
New York Labor Law § 740

Notes: Adopted: Resolution # 2005-06: 336 (October 20, 2005); Amended November 30, 2023 pursuant to Resolution No. 2023-24: 468

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