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EXPLANATION: PROTECTED STAFF COMMUNICATIONS

MSBA has written this NEW policy to reflect the changes brought about by Senate Bill 1007 (2018), known as the "Whistleblower Law," which made significant changes to the ability of public employers, including school districts, to discipline or prevent public employees (teachers, volunteers, staff members, interns and any other persons working or providing services to the district) from discussing the "operations of the district" or reporting alleged prohibited activity.

Specifically the policy states that district administrators or supervisors may not prohibit a district employee from discussing the operations of the district with the legislature, state auditor, attorney general, prosecuting or circuit attorney, law enforcement, news media, members of the public or any state official or body charged with investigating misconduct listed in the policy.

Further, administrators and supervisors cannot prohibit or discipline an employee for disclosing activity or information the employee believes to be evidence of a violation of any law, rule or regulation, mismanagement, a gross waste of district funds or an abuse of authority, any violation of district policy, a waste of public resources, any alteration of technical findings or communication of scientific opinion, a breach of professional ethical canons, or a substantial and specific danger to public health or safety.

The policy also restricts employees from representing their opinions as those of the district and prohibits employees from leaving their assigned work areas to discuss district operations or to report alleged prohibited activity without prior permission.

Employees may be disciplined for reporting information that is false, violates the Sunshine Law or other laws, or is related to the employee's own violations, mismanagement, waste of funds, abuse of authority or endangerment of the public's health or safety.

It is unclear how some of the law's provisions will be interpreted. For example, the statute does not define what, exactly, "the operations of the district" are. Thus, before attempting to discipline a district employee for posting or disclosing unpopular or unsavory comments, MSBA strongly recommends the district contact the MSBA legal department or the district's own attorney.

Districts are required to post a copy of § 105.055, RSMo. MSBA previously provided districts with a copy of this section as GBCBB-AF1. Districts can also download the form from the MSBA website (mosba.org) or contact their editor to obtain a copy.

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MSBA recommends that copies of this document be routed to the following areas because the content is of particular importance to them. The titles on this list may not match those used by the district. Please forward copies to the district equivalent of the title indicated.					
X	Board Secretary		Business Office		Coaches/Sponsors
	Facility Maintenance		Food Service		Gifted
X	Human Resources	X	Principals		Library/Media Center
	Health Services		Counselor		Special Education
	Transportation		Public Info/Communications		Technology

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PROTECTED STAFF COMMUNICATIONS

The St. Joseph School 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.

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:

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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 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 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.

* * * * *

Note: The reader is encouraged to check the index located at the beginning of this section for other pertinent policies and to review administrative procedures and/or forms for related information.

Adopted:

Revised:

Cross Refs: BDC, Closed Meetings, Records and Votes
DA, Fiscal Responsibility
JHG, Reporting and Investigating Child Abuse/Neglect
JO, Student Records
KL, Public Complaints
KLA, Concerns and Complaints Regarding Federal Programs

Legal Refs: §§ 105.055, 210.115, 610.010, RSMo.
Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g
Americans with Disabilities Act, 42 U.S.C. §§ 12101 - 12213
Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 - 1417

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Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2611 - 2619
National School Lunch Program, 7 C.F.R. 210
Pickering v. Board of Education, 391 U.S. 563 (1968)
Connick v. Myers, 461 U.S. 138 (1983)
Garcetti v. Ceballos, 547 U.S. 410 (2006)

St. Joseph School District, St. Joseph, Missouri