



Whistleblower Policy Template

Prepared for

**The adoption and use of Special and Special Service Districts
in Utah in consultation with their legal counsel**

Prepared by

The Utah Association of Special Districts

November 9, 2023 Update

(insert name of the District)

WHISTLEBLOWER POLICY

I. GENERAL

_____ (the “District”) expects its governing body (“Board”) members, officers and staff to observe high standards of public and personal ethics in the conduct of their duties and responsibilities. Staff and representatives of the District must practice honesty and integrity in fulfilling their responsibilities and comply with all applicable laws, rules and regulations.

II. OBJECTIVES

A. Overview

The objectives of the District’s Whistleblower Policy (“Policy”) are to (1) establish policies and procedures to encourage officers and staff to come forward with credible information on illegal practices or serious violations of adopted policies of the District; (2) specify that the District will protect such persons from retaliation; and (3) identify where such information can be reported.

1. Encouragement of Reporting

The District encourages complaints, reports or inquiries about illegal practices or serious violations of applicable law, including unethical conduct that violates the Utah Public Officer’s and Employee’s Ethics Act, Title 67, Chapter 16 of the Utah Code, or District policies, including illegal or improper conduct by the District itself, by its leadership, or by others on its behalf. Appropriate subjects to raise under this Policy include financial improprieties which may include the waste or misuse of public funds, property or manpower; accounting or auditing matters; gross mismanagement; ethical violations; a violation or a suspected violation of an applicable law, rule or regulation; or other illegal or improper practices or policies by employees, Board members, officers, and other stakeholders of the District, on a confidential or anonymous basis. Each of the subjects that may be raised under this Policy may be referred to as a “Concern” and, collectively, they may be referred to as “Concerns”. Other subjects on which the District has existing complaint mechanisms should be addressed under those mechanisms, such as raising matters of alleged discrimination or harassment via the District’s human resources channels unless those channels are implicated in the wrongdoing. This Policy is not intended to provide a means of appeal from outcomes in those other mechanisms.

B. Protection from Retaliation

The District prohibits retaliation by or on behalf of the District against officers or staff for making good faith complaints, reports or inquiries under this Policy or for participating in a review or investigation under this Policy. This protection extends to those whose allegations are made in good faith but prove to be mistaken. The District reserves the right to discipline individuals who make bad faith, knowingly false, or vexatious complaints, reports or inquiries or who otherwise abuse this Policy provided, however, that an individual who presents a Concern under this Policy will be presumed to have communicated in good faith, but that presumption may be rebutted by showing that the individual knew or reasonably ought to have known that the report is malicious, false or frivolous. Moreover, an officer or employee who retaliates against someone who has reported a Concern in good faith is subject to discipline up to and including termination of employment.

III. PROCEDURE

A. How to Report

Employees should first discuss their Concerns with their immediate supervisors. If, after speaking with his or her supervisor, an individual continues to have reasonable grounds to believe the Concern is valid, the individual should report the Concern to the chief executive or administrative officer of the District (the “General Manager”) or his or her designee. In the alternative, if the individual is uncomfortable speaking with his or her supervisor, or the supervisor is a subject of the Concern, the individual should report his or her Concern directly to the General Manager or the General Manager’s designee. If the General Manager is a subject of the Concern, the individual should report his or her Concern directly to the Board Chair.

B. Record

If the Concern was reported orally to the General Manager or the Chair, the reporting individual should, with assistance from the General Manager or the Chair, as appropriate, describe in detail the specific facts demonstrating the basis for the Concern in writing. Either the General Manager or the Board Chair may consult with the District’s Attorney, document the Concern, and identify appropriate follow up steps.

C. Confidentiality

Reports of Concerns, and investigations pertaining to these Concerns, will be kept confidential to the extent possible, subject to the constraints and requirements of the Government Records Access and Management Act, Utah Code Ann. § 63G-2-101, *et. seq.* (“GRAMA”), and in furtherance of the Utah Protection of Public Employees Act, Utah Code Ann. § 67-21-1 *et. seq.* (the “Employees Act”), and consistent with the need to conduct an adequate investigation. Unauthorized disclosure of reports of Concerns to individuals not involved in the chain of command or the investigation will be viewed as a serious disciplinary offense and may result in discipline, up to and including termination of employment.

D. Other Lawful Avenues

An individual may pursue a Concern through other available avenues, such as law enforcement if the conduct is criminal in nature or as otherwise allowed under Utah Code Ann. § 67-21-3. The District will not take any adverse action against an officer, employee or other individual for participating or giving information in an investigation, hearing, court proceeding, legislative or other inquiry, or other administrative review. Furthermore, the District will take no adverse action against an officer, employee or other individual based upon that individual’s objection or refusal to carry out a directive that the individual reasonably believes violates an applicable law, rule or regulation.

E. Civil Fine Against Violator

A person who violates the Employees Act may be liable for a civil fine of not more than \$500.00 under Utah Code Ann. § 67-21-6. The person who takes a retaliatory action against an employee in violation of the Employees Act, not that person’s employer (presumably the District), is liable for the fine and, if a District employee is ordered to pay a civil fine under the Employees Act, the District may dismiss that employee. On the other hand, if an employee knowingly makes a false accusation against the District under the Employees Act, that employee may be subject to a fine of not to exceed \$5,000 and dismissal from employment as provided in Utah Code Ann. § 67-21-10.

F. Posting of Notice

The District will post notices and use other appropriate means to notify and inform employees concerning their protections and obligations under the Employees Act. Each new employee hired by the District will be provided a copy of the Employees Act when the employee is hired, and any employee will be given a copy of the Employees Act upon request by the employee and when the employee files a grievance under the Employees Act and/or under this Policy. *See* Utah Code Ann. § 67-21-9.

IV. INDEPENDENT PERSONNEL BOARD

A. Overview

Pursuant to the Employee's Act, the District is not obligated to but may adopt an "ordinance" establishing an Independent Personnel Board to hear and take action on a written complaint alleging retaliatory action. Since the applicable section of the Employee's Act, Utah Code Ann. § 67-21-3.6, is permissive rather than mandatory, the District may at any time, but need not, establish an Independent Personnel Board. However, should the District establish an Independent Personnel Board, it shall do so pursuant to the Policy in general and this Part IV in particular. This Policy shall constitute the "ordinance" referenced in the Employee's Act (since the District does not possess general police power authority, it typically adopts resolutions and policies, rather than ordinances.)

B. Makeup of the Board/Authority

The Independent Personnel Board will consist of at least three individuals, none of whom are employees or officers of the District or immediate family members of employees or officers of the District; who may be customers or constituents of the District, but will otherwise not have any business or working relationship with the District; and must be individuals who can fairly and impartially judge matters raised under a written complaint filed by an officer or employee of the District (the "Complaint"). Members of the Independent Personnel Board and the member who will act as its chair may be designated from time-to-time by either the Board or the General Manager. If an Independent Personnel Board is appointed, a decision supported by a majority of the members of the Independent Personnel Board shall be the decision of the said Board. A proceeding before the Independent Personnel Board may be commenced by filing a written Complaint with the General Manager within forty-five (45) days after the occurrence of the alleged incident giving rise to the Complaint. The Independent Personnel Board will be selected and be prepared to proceed within ten (10) business days after the filing of the Complaint. The complaining employee and District management will be notified of the date, time, and location of a hearing before the Independent Personnel Board at least five (5) business days before the hearing, provided, however, that the hearing may be delayed for up to ten (10) business days at the discretion of the chair of the Independent Personnel Board for the convenience of the parties.

C. HEARING

A hearing before the Independent Personnel Board shall be informal, with or without a record being made in the discretion of the Independent Personnel Board. The aggrieved employee may present his or her case personally or through a representative of choice. Being informal, the hearing will not be bound by legal procedures or by legal rules of evidence. The District's case may be presented by the General Manager, or by anyone selected by the General Manager, unless the complaining employee is the General

Manager, in which event the case may be presented by the Board Chair or by anyone designated by the Board Chair. The member of the Independent Personnel Board who chairs the hearing will control the proceedings and may remove anyone from the proceedings who is being disorderly or disruptive. At the discretion of the chair, witnesses called either in support of or in opposition to the Complaint may be excluded from the hearing room, except when directly presenting information, provided, however, that the employee and the District management's representative are not be excluded from any portion of the hearing (excluding deliberation portions) even though that person may also be a witness who will present factual information to the Independent Personnel Board. Witnesses may, or may not, be sworn to tell the truth, in the discretion of the individual chairing the hearing. All witnesses may be questioned by both sides and may also be questioned by members of the Independent Personnel Board. Witnesses who are merely cumulative (who are presenting information that has already been heard by the Independent Personnel Board) may be limited in the discretion of the Independent Personnel Board chair to prevent the proceedings from being unduly lengthy.

D. BURDEN OF PROOF

In any proceeding before the Independent Personnel Board, the District will have a burden or proof to establish by substantial evidence that the District's action that is the subject of the Complaint was justified by reasons unrelated to the aggrieved employee's good faith actions under Utah Code § 67-21-3. At the beginning of the proceeding, the management representative will explain the background of the Complaint, after which the aggrieved employee may explain the basis for the Complaint. Since management has the burden of proof as stated above, District management will then present its countervailing arguments, evidence, and testimony, which may be cross-examined by the aggrieved employee or his or her representative. At the conclusion of management's presentation, the aggrieved employee, or the employee's representative, may present witnesses (who may be cross examined by the management representative) and other evidence in support of the Complaint. The management representative may then present rebuttal witnesses, subject to cross examination, and information solely to rebut information presented by the employee, and only if the information is new, rather than a rehashing of information and evidence that was previously presented on behalf of management. The aggrieved employee may then present a closing statement, which will be followed by management's closing statement. With the consent of all parties and the Independent Personnel Board, the order and manner of the presentation of the case may vary from the above outline.

E. DELIBERATION

The Independent Personnel Board will, within fifteen (15) working days after the end of the hearing, make its decision in writing and transmit copies of the decision to the interested parties. Any decision of the Independent Personnel Board shall be reported to the Board, but shall not be subject to review or approval by the Board, and shall be final.

F. RELIEF ALLOWED

As provided in Utah Code Ann. § 67-21-3.6(3), if the Independent Personnel Board finds that a retaliatory action has been taken by the District or a District officer or employee in violation of this Policy, the Independent Personnel Board “may order: (a) reinstatement of the employee at the same level as before the retaliatory action; (b) the payment of back wages; (c) full reinstatement of fringe benefits; (d) full reinstatement of seniority rights; or (e) if the retaliatory action includes failure to promote, as described in [Utah Code] Subsection 67-19-a-101(11)(d), a pay raise that results in the employee receiving the pay that the employee would have received if the person had been promoted.”

Approved by the governing body of the District on the ___ day of
_____, 20__.

Title: _____