

Oakland Military Institute College Preparatory Academy's WHISTLEBLOWER PROTECTION POLICY

It is the policy of the Oakland Military Institute College Preparatory Academy (“OMI”) to encourage its employees and applicants for OMI employment to disclose improper governmental activities, based in part on California Education Code Section 44112(c), and to address written complaints that allege acts or attempted acts of interference, reprisal, retaliation, threats, coercion or intimidation against employees or applicants who disclose improper governmental activities. OMI management has the responsibility to seek out and correct any and all abuses resulting from improper governmental activities, and to protect those who come forward to report improper governmental activities.

To assure the reporting of any activity that threatens the efficient administration of the OMI, reports that disclose improper governmental activities shall be kept confidential. Reports shall be submitted to the General Superintendent or the Office of the Inspector General (“OIG”) for investigation.

An employee whose conduct may be the subject of the complaint of retaliation, reprisal, interference, threats, coercion or intimidation shall be given all due process rights in any disciplinary action that may result, pursuant to existing and applicable OMI personnel policies and collective bargaining agreements and procedures established by the California State Personnel Commission.

This policy is adopted pursuant to California Education Code Section 44110 *et seq.*, and shall be known as the “Oakland Military Institute College Preparatory Academy Whistleblower Protection Policy.”

I. DEFINITIONS

A. Definitions Used in this Whistleblower Policy

To assist in the understanding of this policy, the following terms shall be defined as follows:

1. "Any person" includes classified, certificated and unclassified employees, and applicants for OMI employment.
2. “Board” means the Alameda County Board of Education.
3. “Complaint” means the written complaint alleging actual or attempted acts of reprisal, retaliation, threats, coercion, intimidation, interference, or similar improper acts that is submitted under penalty of perjury.

4. "Disciplinary action" means any direct form of discipline as defined in personnel rules and regulations adopted by the OMI. "Disciplinary action" shall include the firing of an employee.
5. "General Superintendent" is defined as the Superintendent for the Oakland Military Institute.
6. "Improper governmental activity" is defined as any activity by a OMI department, or by an employee that is undertaken in the performance of the employee's official duties, whether or not such action is within the scope of his or her employment or by an individual or company conducting or performing work for the OMI and which is:
 - a. in violation of any State or Federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of OMI property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, discrimination, misuse of OMI property and facilities, or willful omission to perform duty, or
 - b. in violation of any OMI policy, procedure, rule or regulation established by the Board, or
 - c. is economically wasteful, or involves gross misconduct, incompetence, or inefficiency, or
 - d. is a substantial and specific danger to public health or safety.
7. "OIG" means the Oakland Military Institute College Preparatory Academy's Office of the Inspector General.
8. "Personnel Commission" means the OMI Personnel Commission.
9. "Protected disclosure" means a good faith communication that discloses or demonstrates an intention to disclose information that may evidence either of the following:
 1. An improper governmental activity.
 2. Any condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition. A disclosure made in connection with an employee's assigned normal duties is not protected.

10. "Report" means an oral or written protected disclosure of information as defined above.

11. "Use of official authority or influence" includes promising to confer, or conferring, any benefit; effecting, or threatening to effect, or taking, or directing others to take, or recommending, processing, or approving, any personnel action, including, but not limited to, appointment, promotion, transfer, performance, evaluation, suspension, or other disciplinary action.

B. Relation to California Education Code Section 44110 et seq.

If there is any conflict between the provisions of this policy, including definitions, or those used in California Education Code Section 44110 et seq., the statutory provisions shall control.

II. REPORTING IMPROPER GOVERNMENTAL ACTIVITIES

A. Reporting Improper Governmental Activities

Any person may report information alleging improper governmental activity under procedures established by the Alameda County Board of Education ("Board").

B. Where to Report Improper Governmental Activities

Reports that disclose information concerning improper governmental activities shall be submitted as follows:

1. Classified, certificated and unclassified employees shall provide information to their immediate Supervisor or the information shall be provided directly to the OIG;
2. Applicants for OMI employment shall submit information directly to the OIG;
3. If the OIG or the General Superintendent is the subject of the information, the Supervisor receiving the information shall submit it directly to the President of the Board.

C. Procedure for Investigating Reports of Improper Governmental Activities

Reports alleging improper governmental activity will be investigated, if warranted, and reported according to procedures established by the OIG, the General Superintendent and the Board.

III. PROTECTION FROM ACTUAL OR ATTEMPTED ACTS OF INTERFERENCE, INTIMIDATION, REPRISAL, RETALIATION, THREATS AND COERCION FOR REPORTING IMPROPER GOVERNMENTAL ACTIVITIES

A. Reprisal, Retaliation, Threats, Coercion, Intimidation or Interference with the Right to Report Information of Improper Governmental Activities Prohibited

An OMI employee may not directly or indirectly use or attempt to use the official authority or influence of his or her position or office to interfere with the right of a person to provide information as described in Section II.A., or intentionally engage in acts of reprisal, retaliation, threats, coercion or similar acts against a person as a result of his or her providing, or attempting to provide, such information or refusing to obey an illegal order.

B. Filing a Written Complaint

1. When information, as described in Section II.A. has been provided under the procedures of Section II.B. and the complainant becomes the subject of acts of actual or attempted reprisal, retaliation, interference, intimidation, coercion or threats, a complaint shall be filed directly with an immediate Supervisor, except as provided in III.B.2 (b), below. The Supervisor shall be responsible for submitting the complaint to the OIG with a memorandum from the Supervisor.
2. When information, as described in Section II.A. has been provided under the procedures of Section II.B. and the complainant becomes the subject of actual or attempted interference or retaliation, reprisal, intimidation, coercion or threats, a complaint shall be filed directly with the OIG under the following conditions:
 - a. The person is an applicant for employment; or
 - b. The employee does not wish to file the complaint with an immediate Supervisor because the disclosure of improper governmental activity or complaint of reprisal action involves allegations against the Supervisor.
3. Any complaint filed with the OIG must be filed within 12 months of the alleged act or threat of interference or retaliation.
4. In order for a complaint of actual or attempted acts of interference, intimidation, reprisal, retaliation, threats or coercion to be accepted by the OIG, the complainant must have previously provided information, as described in Section

II.A. pursuant to the procedures in Section II.B., with the immediate Supervisor, OIG, General Superintendent or President of the Board.

5. An exception shall be made where the complainant presents a preponderance of evidence that the complainant was prevented from providing information by intimidation or interference. A preponderance of evidence means that it is more likely than not that the intimidation or interference has occurred. The OIG will determine if the evidence is sufficient in his sole discretion.
6. A complaint of actual or attempted acts of interference, reprisal, retaliation, intimidation, coercion, threats or similar improper acts may also be filed with a local law enforcement agency pursuant to California Education Code Section 44114(a).

C. Investigation of Complaints by the OIG

1. The OIG shall determine issues of timeliness and where warranted, investigate complaints from any person alleging actual or attempted acts of reprisal, interference, intimidation, retaliation, threats, coercion or similar acts.
2. When a complaint is filed with the OIG, the OIG's investigation and findings shall be limited to the interference, reprisal or retaliation aspect of the complaint only.
3. Before final findings are made, the OIG will provide a copy of the complaint and any documents upon which the OIG intends to rely in reaching findings to the person accused of interference, intimidation, reprisal, retaliation, threats, or coercion. That person will be provided the opportunity to respond to the complaint and to file a written statement, which will become part of the record submitted to the General Superintendent.
4. The OIG will present findings to the General Superintendent within a reasonable time, or within such specific time limits as may be agreed to by the General Superintendent and OIG, or as established by the Board.
5. If, for any reason, the OIG's activities with respect to a complaint are terminated before findings are sent to the General Superintendent, the complaint will be sealed and will be released only to the OIG, General Superintendent or Board and as required by law.
6. If the report alleges that the OIG or the General Superintendent interfered or took the retaliatory action, the OIG shall not investigate the report. The file shall be

directly provided to the President of the Board who shall investigate the matter or designate someone to investigate the retaliation.

D. General Superintendent's Decision

1. The OIG shall present findings of the investigation to the General Superintendent, who shall reach a decision regarding the complaint and shall communicate that decision to the complainant and to the person or persons accused of violating Section III.A. of this Policy. The General Superintendent's decision will include any appropriate relief for the complainant but will not describe any disciplinary action that may be taken against the accused party or parties. The provisions of California Education Code Section 44114(e) shall govern the General Superintendent's decision.
2. If the complaint alleges that the OIG or the General Superintendent interfered or took the retaliatory action, the complaint of retaliation shall be presented to the President of the Board, who will take the administrative actions described for the General Superintendent.

DI. Discipline of a OMI Employee

Subject to existing and applicable OMI personnel program policies and collective bargaining agreements and procedures established by the Personnel Commission, the General Superintendent will determine the appropriate disciplinary action, if any, to be initiated against a OMI employee found to have taken reprisal actions, interfered or retaliated, as defined in Section III.A.

F. Appeal of the Decision

Decisions of the General Superintendent based on findings of the OIG may be appealed to the Board of Education pursuant to existing, applicable OMI personnel program policies and collective bargaining agreements and procedures established by the Personnel Commission.

G. Annual Report

The General Superintendent shall submit an annual report of actions taken under this policy through the Business, Finance, Audit and Technology Committee to the Board of Education. The report should include complaints received and acted on during the fiscal year (July 1 through June 30).