

WHISTLEBLOWER COMPLAINT PROCEDURES

The Whistleblower's Act, contained in sections 112.3187-112.31895, Florida Statutes, is intended to prevent agencies, or independent contractors of agencies, from taking retaliatory action against an employee who reports violations of law on the part of a public employer or an independent contractor. It protects any individual "who discloses information to an appropriate agency alleging improper use of governmental office, gross waste of funds, or any other abuse or gross neglect of duty on the part of an agency, public officer, or employee." In order to qualify as a whistleblower complaint, particular information must be disclosed to certain statutorily designated officials. The act provides that for disclosures concerning a local governmental entity, such as a county or a school district, the information must be disclosed to a chief executive officer as defined in section 447.203(9), Florida Statutes, or "other appropriate local official."

- A. When a complaint is made, the OCPS official receiving the information shall have 20 days in which to determine whether it is the type of information described in the Whistleblower's Act. In doing so, the OCPS official may take the following into consideration:
1. Whether the complaint contain allegations conforming to section 112.3187(5)(a) and (b), Florida Statutes, alleging:
 - a. "Any violation or suspected violation of any federal, state, or local law, rule, or regulation committed by an employee or agent of an agency or independent contractor which creates and presents a substantial and specific danger to the public's health, safety, or welfare." See section 112.3187(5)(a), Fla. Stat.
 - b. "Any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty committed by an employee or agent of an agency or independent contractor." See section 112.3187(5)(b), Fla. Stat.
 2. Whether the source of the information is a person within the scope of the Act, to wit:
 - a. an employee of OCPS or
 - b. an agent of OCPS or
 - c. an independent contractor who has entered into a contract with OCPS
 3. Whether the information demonstrates reasonable cause to suspect a violation of the law.
- B. If the answer to all three questions is **yes**, then, the OCPS official making the determination shall conduct or facilitate an investigation and involve the assistance of any relevant department. The requirement to investigate is phrased in mandatory terms and nothing in the Whistleblower's Act would terminate this duty in response to a request from the complainant.
- C. If the answer to any of the three questions is **no**, or there is not enough information in the complaint to make a determination, and the complaint relates to the conduct of an OCPS employee, then the OCPS official shall refer the matter to Employee Relations. The OCPS official shall also make contact with the appropriate supervisor (i.e. school principal, area superintendent, etc.), as appropriate, to relay the information contained in the initial complaint. If the answer to any of the three questions is **no**, or there is not enough information in the complaint to make a determination, but the complaint is not related to the conduct of an OCPS employee, then the OCPS official shall refer the matter to the appropriate department overseeing the conduct which is the subject of the complaint.
- D. **The name or identity of the individual disclosing this information is confidential.** Section 112.3188(2)(b), Florida Statutes, provides confidentiality for those records relating to the agency's active investigation of a whistleblower complaint and is not limited to those records received as part of an active investigation of a complaint of retaliation. However, while the name or identity of the individual disclosing this information is confidential, the initial report of wrongdoing received by the agency is a public record, since that information was received before an investigation was begun.
- E. The OCPS official shall maintain a record of all complaints made or purportedly made under the Whistleblower's Act.

If you believe that you have a whistleblower complaint, you may send an email via the OCPS Legal Services website, call the hotline at 407-317-3976, or send information to the Office of Legal Services.