



OWWL LIBRARY SYSTEM

WHISTLEBLOWER POLICY AND BAR ON RETALIATION

APPLICABLE LAW

New York's Not-for-Profit Corporation Law §715-b requires the board of every not-for-profit corporation that has twenty or more employees AND in the prior fiscal year had annual revenue in excess of one million dollars to adopt, oversee the implementation of, and ensure compliance with, a "Whistleblower Policy" to protect from retaliation persons who report suspected improper conduct.

This policy must provide that "no director, officer, key person, employee or volunteer of a corporation who in good faith reports any action or suspected action taken by or within the corporation that is illegal, fraudulent or in violation of any adopted policy of the corporation shall suffer intimidation, harassment, discrimination or other retaliation or, in the case of employees, adverse employment consequence."

At the same time, New York's Labor Law §740 requires that every employer inform their employees via a posted notice that an employer may not take any retaliatory action against an employee (or a former employee, or an independent contractor) for threatening to report, reporting to a public body (after reporting to the employer), participating in the investigation of, or refusing to participate in, an illegal practice.

To support the mission of the OWWL Library System, to create a visible commitment to compliance and integrity, and to ensure compliance with the above-referenced laws barring retaliation for reporting and other action based on a reasonable belief of a violation of law or policy, the board of trustees of the OWWL Library System adopts the following policy:

POLICY

- 1) No director, officer, key person, employee or volunteer of a corporation who in good faith reports any action or suspected action taken by or within the corporation that is illegal, fraudulent or in violation of any adopted policy of the corporation shall suffer intimidation, harassment, discrimination or other retaliation or, in the case of employees, adverse employment consequence; and
- 2) No employee*, former employee, or persons employed as independent contractors shall be retaliated against for:
 - a. disclosing, or threatening to disclose, to a supervisor or to a public body* an activity, policy or practice of the employer that the employee reasonably believes is

- in violation of law, rule or regulation or that the employee reasonably believes poses a substantial and specific danger to the public health or safety, or
- b. providing information to, or testifying before, any public body conducting an investigation, hearing or inquiry into any such activity, policy or practice by such employer; or
 - c. objecting to and/or refusing to participate in any such activity, policy or practice.

*A NOTE FOR EMPLOYEES: The Labor Law's protection against retaliatory action pertaining to "disclosure to a public body" shall NOT apply to an employee who makes such disclosure to a public body unless the employee has made a good faith effort to notify the OWWL Library System by bringing the activity, policy or practice to the attention of the Executive Director or the Board President and has afforded the OWWL Library System a reasonable opportunity to correct such activity, policy or practice.

That said, such employer notification shall NOT be required where: (a) there is an imminent and serious danger to the public health or safety; (b) the employee reasonably believes that reporting to the supervisor would result in a destruction of evidence or other concealment of the activity, policy or practice; (c) such activity, policy or practice could reasonably be expected to lead to endangering the welfare of a minor; (d) the employee reasonably believes that reporting to the supervisor would result in physical harm to the employee or any other person; or (e) the employee reasonably believes that the supervisor is already aware of the activity, policy or practice and will not correct such activity, policy or practice.

- 3) The Executive Director is designated to administer this policy, to receive reports, to coordinate investigations and to report to the board as required in the below "Procedure."

PROCEDURE

Reporting

1. Directors, officers, key persons, or volunteers may report suspected any action or suspected action taken by or within the corporation that is illegal, fraudulent or in violation of any adopted policy of the corporation to the Executive Director or the Board President.
2. Employees may report action by the employer that the employee reasonably believes is in violation of law, rule or regulation, or that the employee reasonably believes poses a substantial and specific danger to the public health or safety by contacting the Executive Director or Board President verbally or in writing.

RESPONSE & INVESTIGATION

Upon receiving a report, the Executive Director, or in the case of a conflict or risk of bias, their designee, shall immediately initiate a threshold review to determine if the reported activity, if it

occurred, would be illegal, fraudulent, in violation of any adopted policy of the corporation or poses a substantial and specific danger to the public health or safety.

If the reported activity does not rise to the level of warranting an investigation under this policy, the Executive Director will alert the reporter as to the determination and confirm that no further action will be taken under this Policy.

If the reported activity does rise to the level of warranting an investigation under this or any other policy, the Executive Director will develop an investigation plan that limits those aware of the report on a need-to-know basis and sets out context-specific procedures for ensuring confidentiality during any follow-up.

If the reported activity does rise to the level of warranting an investigation under this policy, but the alleged behavior falls under another policy with its own provision for investigation (such as Non-Discrimination, Sexual Harassment, or Conflict of Interest) the matter will be investigated by the relevant policy. However, to preserve the confidentiality of reporters, at all times, receipt, evaluation, and investigation of reports under that relevant policy shall be planned to limit those aware of the report on a need-to-know basis.

To ensure prompt investigations and to avoid any appearance of bias, the Executive Director is allowed to retain third parties to evaluate reports, to conduct investigations, and to present their findings to the board. Such use of a third party shall be disclosed to the reporting individual so they are apprised of the delegation of responsibility. All third parties so delegated to shall sign a contract with written assurance of confidentiality.

Barring unusual circumstances, investigations should be initiated within three business days of a report, and concluded within sixty days of a report, unless the subject matter of the report warrants investigation under a policy with a different deadline.

EVALUATION OF REPORTS

After investigation of the report, the person designated as the investigator will generate a "Confidential Whistleblower Report" setting forth a) the original report with the reporter's identity redacted (unless it is a material component of the report) and the initial determination of what law, regulation, policy, or risk it implicates; b) a timeline; c) other evidence gathered, including but not limited to interviews, document evaluation, and d) conclusions of fact, including a determination as to if any of the reported or discovered activity was illegal, fraudulent, or in violation of any adopted policy of the corporation, or poses a substantial and specific danger to the public health or safety.

The Confidential Whistleblower Report will then be submitted in confidence to the Board of Trustees for evaluation.

A person who is the subject of a whistleblower complaint may not be present at or participate in Board of Trustee deliberations or vote on the matter relating to such complaint. However, the Board of Trustees may request that the person who is subject to the complaint present information

as background or answer questions at a committee or board meeting prior to the commencement of deliberations or voting relating thereto.

The Board may consult legal counsel as needed and will meet in executive session to review, discuss, and deliberate on any Confidential Whistleblower Report, prior to voting on a final resolution per the requirements of the Public Officers' Law.

COMPLAINTS OF RETALIATION

Any adverse impact or prohibited retaliation or suspected retaliation prohibited by this policy should be reported to either the Executive Director, or the Board President.

Upon receiving a report of retaliation prohibited by this policy, either authority, or their designee, will initiate a threshold review to determine if the reported activity, if it occurred, would be an adverse consequence barred by this policy, and also determine if immediate interim action is needed to address real or potential ongoing negative impacts.

If the reported activity does not rise to the level of warranting an investigation under this policy, the reviewing authority will alert the reporter as to the determination and confirm that no further action will be taken.

If the reported activity does rise to the level of warranting an investigation under this or any other policy, the Executive Director will develop an investigation plan that limits those aware of the report to a need-to-know basis and sets out context-specific considerations for ensuring confidentiality during any follow-up.

Barring unusual circumstances, investigations under this section "4" should be initiated within three business days of a report, and concluded within thirty days of a report, unless the subject matter of the report warrants investigation under a policy with a different deadline.

The Board will direct appropriate action, including termination or employment, contract, or appointments, if a person or persons have violated the prohibitions in this policy.

PUBLICATION

It is important that our people know of their rights and protections.

Therefore, a copy of this policy be distributed to all officers, key persons, employees, and to volunteers who provide substantial services to the corporation and a copy shall be posted conspicuously in easily accessible and well-lighted places customarily frequented by employees and applicants for employment, including the following:

- 1) The Staff Break Room
- 2) The Board Room
- 3) On the website at <https://owwl.org/system/policies>

DEFINITIONS

For purposes of this policy, "retaliation" against employees, former employees, or an independent contractor means an adverse action taken by an employer or his or her agent to discharge, threaten, penalize, or in any other manner discriminate against any employee or former employee exercising his or her rights under this section, including (i) adverse employment actions or threats to take such adverse employment actions against an employee in the terms of conditions of employment including but not limited to discharge, suspension, or demotion; (ii) actions or threats to take such actions that would adversely impact a former employee's current or future employment; or (iii) threatening to contact or contacting United States immigration authorities or otherwise reporting or threatening to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of an employee's family or household member (as defined in subdivision 2 of §459-a of the New York Social Services Law), to a federal, state, or local agency.

"Retaliation" against directors, officers, key persons, or volunteers also includes, but is not limited to: intimidation, harassment, discrimination or, in the case of employees, adverse employment consequences.

"Public body" as used in this policy includes the following: (i) the United States Congress, any state legislature, or any elected local governmental body, or any member or employee thereof; (ii) any federal, state, or local court, or any member or employee thereof, or any grand or petit jury; (iii) any federal, state, or local regulatory, administrative, or public agency or authority, or instrumentality thereof; (iv) any federal, state, or local law enforcement agency, prosecutorial office, or police or peace officer; (v) any federal, state or local department of an executive branch of government; or (vi) any division, board, bureau, office, committee, or commission of any of the public bodies described in subparagraphs (i) through (v) of this paragraph.

WHISTLEBLOWER POLICY ACKNOWLEDGMENT & CERTIFICATION FORM

To be completed by Trustees, Officers, Employees, and Volunteers.

I, _____, hereby certify that:

- a) I have received a copy of the OWWL Library System’s Whistleblower Policy and Bar on Retaliation Policy (the “Policy”);
- b) I have read and understand the Policy; and
- c) I agree to comply with the Policy.

Signature: _____

Date: _____

*Amended: February 9, 2022; February 10, 2021
Reviewed: January 13, 2016
Adopted: October 14, 2015*