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MEMORANDUM

TO: **All School District Superintendents**
State Public Charter School Authority
All School District and Charter School Governing Boards
All School District and Charter School Testing Directors

FROM: **Steve Canavero, PhD**
Interim State Superintendent of Public Instruction

DATE: **August 1, 2025**

SUBJECT: SUMMARY OF WHISTLEBLOWER PROTECTIONS FOR TESTING ADMINISTRATION

Nevada Revised Statutes (NRS) 390.350 through 390.430 provide for specific rights and responsibilities of school district personnel with regard to the disclosure of irregularities in assessment administration and assessment security relative to all state and district-mandated examinations. NRS 390.425 also requires the Nevada Department of Education (NDE) to annually submit a written summary of these rights and responsibilities to the board of trustees of each school district and to the governing body of each charter school. **Upon receipt of this summary, the board of trustees or governing body shall provide a copy of the written summary to all school officials within the school district or charter school.**

Questions related to assessment security can be referred to NDE's Office of Assessment, Data, and Accountability Management at ADAMinfo@doe.nv.gov. Thank you for your assistance in this matter.

cc: Lisa Ford, Interim Deputy Superintendent for Student Achievement,
Nevada Department of Education

Peter Zutz, Administrator, Office of Assessment, Data and Accountability Management
Nevada Department of Education

Protection of School District Personnel
Regarding the Disclosure of Testing Irregularities
2025-2026 School Year

Nevada Revised Statutes (NRS) 390.350 through 390.430 provide for specific rights and responsibilities of school district personnel with regard to the disclosure of irregularities in testing administration and testing security relative to all state and district-mandated examinations. NRS 390.425 also requires the Nevada Department of Education to annually submit a written summary of these rights and responsibilities to the board of trustees of each school district and to the governing body of each charter school. Below please find those terms defined by NRS 390.350-390.380 with some clarifications followed by the rights and responsibilities of those involved in the state assessment process.

Definitions

- "Examination" means achievement and proficiency examinations that are administered to pupils pursuant to 390.105, 390.600, and 390.610, and includes the following:
  - English Language Arts (ELA) and Mathematics in grades 3 – 8;
  - Science assessments in grades 5, 8, and High School;
  - College and Career Readiness Assessment;
  - Reading Assessment in grades K – 3; and
  - Any other examinations that measure achievement and proficiency of pupils and which are administered to pupils on a district-wide basis.
- "Irregularity in testing administration" means the failure to administer an examination in the manner intended by the person or entity that created the examination.
- "Irregularity in testing security" means an act or omission that tends to corrupt or impair the security of an examination, including, without limitation:
  - The failure to comply with the department or district security procedures.
  - The disclosure of questions or answers to questions on an examination in a manner not otherwise approved by law.
  - Other breaches in the security or confidentiality of the questions or answers to questions on an examination.
- "Reprisal or retaliatory action" is action that is taken because the school official disclosed information concerning testing irregularities and includes, without limitation:
  - Frequent or undesirable changes in the location of an office;
  - Frequent or undesirable transfers or reassignments;
  - The issuance of letters of reprimand, letters of admonition or evaluations of poor performance;
  - A demotion;
  - A reduction in pay;
  - The denial of a promotion;
  - A suspension;

- A dismissal;
- A transfer; or
- Frequent changes in working hours or workdays.

- "School official" means:
  - A member of a board of trustees of a school district;
  - A member of a governing body of a charter school; or
  - A licensed or unlicensed person employed by the board of trustees of a school district or the governing body of a charter school.

Rights and Responsibilities

- School officials are encouraged to disclose testing irregularities, and it is the intent of the legislature to protect the rights of a school official who makes such a disclosure.
- A school official shall not directly or indirectly use or attempt to use his official authority or influence to intimidate, threaten, coerce, command, or influence another school official in an effort to interfere with or prevent the disclosure of information concerning testing irregularities. "Official authority or influence" includes taking, directing others to take, recommending, processing, or approving any personnel action such as an appointment, promotion, transfer, assignment, reassignment, reinstatement, restoration, reemployment, evaluation, or other disciplinary action.
- If reprisal or retaliatory action is taken against a school official who discloses information concerning testing irregularities within 2 years after the information is disclosed, the school official may file a written appeal with the State Board for a hearing on the matter and determination of whether the action taken was a reprisal or retaliatory action. The written appeal must be accompanied by a statement that specifies:
  - The facts and circumstances leading to the disclosure of information concerning testing irregularities; and
  - The reprisal or retaliatory action that is alleged to have been taken against the school official.
- The State Board may issue a subpoena to compel the attendance or testimony of any witness or the production of any materials needed as part of the appeal investigation.
- If the State Board determines that the action taken was a reprisal or retaliatory action, it may issue an order directing the proper person to desist and refrain from engaging in such action.
- The State Board may not rule against the school official based on the identity of the person or persons to whom the information concerning testing irregularities was disclosed.
- No school official may use the provisions outlined in this summary to harass another school official.
- A person who willfully discloses untruthful information concerning testing irregularities:
  - Is guilty of a misdemeanor; and
  - Is subject to appropriate disciplinary action.
- These provisions do not apply to offenses committed before July 1, 2001.
- Upon receipt of this summary, the board of trustees or governing body shall provide a copy of the written summary to all school officials within the school district or charter school.

Hearing Policy Adopted by State Board of Education
October 8, 2015

Overview

Nevada Revised Statute (391.624) declares to be the policy of this state that a school official is encouraged to disclose, to the extent not expressly prohibited by law, irregularities in testing administration and testing security, and it is the intent of the Legislature to protect the rights of a school official who makes such a disclosure. State law provides this protection for the disclosure of irregularities in testing administration and testing security to all statewide and district-wide test administrations, including the college and career readiness assessment, the criterion-referenced examinations, the end-of-course examinations, and any examination measuring the achievement and proficiency of pupils that is administered district-wide.

A school official may file an appeal with the State Board for reprisal or retaliatory action taken in response to disclosure of irregularity in testing administration and security. The written appeal must be accompanied by a statement from the school official that includes particular information. If the school official is making specific allegations against any individual, that individual must be specifically identified by the school official bringing the appeal. The State Board of Education then determines if the action taken was a reprisal or retaliatory action as defined in law.

State Board of Education Role

The State Board must adopt rules of procedure for conducting a hearing as requested by a school official through a written appeal.

Suggested Hearing Procedures

Based on the procedures for conduct of a State Board hearing related to the suspension of a license, (NAC 391.545) the following guidelines are proposed for the public hearing of a written appeal before the State Board of Education.

- As these hearings may involve character, or professional competence of an individual, the hearings may be closed to the public under NRS 241.030(1)(a). The Board of Education will conduct these hearings in closed session to protect the privacy of the individuals involved unless an open meeting is required by NRS 241.030(2), NRS 241.031 or any other provision of law.
- All participants in the hearing shall conduct themselves in a respectful manner.
- The State Board shall send written notice of the hearing 10 calendar days prior to the hearing.
- Before the hearing, the parties must exchange copies of any evidence that will be submitted as exhibits during the hearing. Not less than 5 days before the hearing, each party shall provide to the assistant to the State Board and all other parties the name of each witness who will testify at the hearing and a summary of his or her anticipated testimony.

- Any objections to written evidence must be communicated to the assistant to the State Board, and the other party 24 hours prior to the hearing or they will be deemed waived. The parties shall use their best efforts to discuss and reach conclusions on the admissibility of disputed items prior to the hearing. Failure to make a good faith effort to resolve the admissibility of any item prior to the hearing may result in the objection that that item being deemed waived.
- All evidence offered at the hearing must be relevant and bear upon the written appeal.
- Each document or material offered in evidence must be marked as follows:
    - Documents or materials presented by the school official bringing the written appeal before the State Board must be marked at the bottom of the page as "Exhibit____" indicated by consecutive Arabic numerals, beginning with the number "1."
    - Documents or materials presented by the entity or school official accused of reprisal or retaliatory action must be marked at the bottom of the page as "Exhibit____" indicated by consecutive letters of the English alphabet, beginning with the letter "A." If the entity or school official accused of reprisal or retaliatory action offers more than 26 exhibits, the 27th exhibit must be marked as "Exhibit AA," the 28th exhibit as "Exhibit BB," and so forth.

- The hearing must be recorded. If requested by the superintendent, Board President, the school official bringing the appeal or the entity or school official accused of reprisal or retaliatory action, an audio copy of the hearing shall be provided.
- The technical rules of evidence do not apply and formal exceptions to Board President's rulings are not necessary. The ground on which a party relies for an objection to or an exclusion of evidence must be briefly stated. Any offer or proof for the record must include a statement of the substance of the evidence to which objection has been sustained. The decision by the Board President on the admissibility of evidence is final.
- A declaration may be admitted as evidence in lieu of oral testimony if the information contained in the affidavit is admissible.
- Each person who provides a declaration or a statement at the hearing shall state his or her name, address, and occupation for the record.
- It is the responsibility of each party to arrange for the appearance of all necessary witnesses. The State Board may request additional witnesses or information as it deems necessary. The State Board is authorized to issue subpoenas as allowed by NRS 391.636.
- Upon proper recognition by the Board President or his or her designated representative, any member of the State Board of Education may ask a question of a party or witness at any time during the hearing.
- The Board President may, upon the motion of a party, order a witness, other than a party to a hearing, to be excluded from the hearing to prevent that witness from hearing the testimony of another witness at the hearing.
- The Board President may approve or reject any stipulation of fact offered by the parties at the hearing, including any written stipulation introduced into evidence as an exhibit or any stipulation in the form of an oral statement. A stipulation is binding on all parties to it and

may be regarded by the State Board as evidence. The State Board may require additional proof of evidence of the facts stipulated.

- The Board President may request the parties to submit briefs on any contested issues of law or fact. If the Board President requires the parties to submit briefs, he or she shall not conclude the hearing until after the briefs are required to be submitted.
- If the school official bringing the written appeal before the State Board fails to appear at the scheduled hearing and has not provided a valid excuse for the failure, the State Board President may vacate the hearing with prejudice. The failure to appear shall be noted in the official transcript of the hearing.
- The Board President may but is not required to grant a continuance of the hearing to enable a party to submit additional proof of any fact.

Order of Statements, Evidence and Arguments

- Statements, evidence and arguments are normally received in the following order, but the Board President may modify the order in his or her sole discretion:
    1. Opening statement by school official bringing the written appeal before the State Board
    2. Opening statement by the entity or school official accused of reprisal or retaliatory action
    3. Evidence by the school official bringing the written appeal before the State Board
    4. Evidence by the entity or school official accused of reprisal or retaliatory action
    5. Rebuttal evidence by the school official bringing the written appeal before the State Board
    6. Closing argument by the school official bringing the written appeal before the State Board
    7. Closing argument by the entity or school official accused of reprisal or retaliatory action
    8. Rebuttal argument by the school official bringing the written appeal before the State Board

- Arguments and evidence may be limited by the Board President in the event the evidence being presented is duplicative or irrelevant.
- The school official bringing the written appeal before the State Board has the burden of proving a preponderance of the evidence that the action taken was reprisal or retaliatory.

At the close of the hearing the Board may discuss whether sufficient evidence was presented to establish that the action taken was reprisal or retaliatory. After discussion the State Board shall vote to determine whether sufficient evidence was presented to establish that the action taken was reprisal or retaliatory. If the State Board determines that the action taken was reprisal or retaliatory, it may issue an order directing the proper person to desist and refrain from engaging in such action.