

**BOARD POLICY NO. 043****WHISTLEBLOWER PROTECTION****1. Purpose**

The purpose of this policy is to ensure the protection of whistleblowers who file reports with the Independent Performance Auditor (IPA) related to alleged fraud, waste, abuse and gross mismanagement at SANDAG -from retaliation by at a SANDAG officer or employee.

2. Definitions**2.1 Whistleblower**

A whistleblower is defined as an officer or employee of SANDAG who reports or otherwise brings to the attention of the ~~Independent Performance Auditor (IPA)~~ any information, which the reporter has a reasonable cause to believe, would constitute one of the following: a work-related violation by a SANDAG officer or employee of any law or regulation; fraud, waste or mismanagement of SANDAG assets or resources; gross abuse of authority; a specific and substantial danger to public health or safety due to an act or omission of a SANDAG officer or employee; or use of a SANDAG office, position or resources for personal gain.

2.2 Retaliation

Retaliation is defined as any adverse employment action, including discipline, demotion or termination.

2.3 Adverse Employment Action

An adverse employment action requires showing that the retaliatory action had a detrimental and substantial effect on the terms, conditions, or privileges of a whistleblower's employment or required the whistleblower to work in a discriminatorily hostile or abusive work environment. A change that is merely contrary to a whistleblower's interests or liking is insufficient.

3. Whistleblower Identity

To the extent permitted by law, the identity of anyone reporting information to the IPA about an improper governmental action shall be treated as confidential unless the employee waives his or her confidentiality in writing.

4. Retaliation Prohibited

No officer or employee of SANDAG shall use or threaten to use any official authority or influence to restrain or prevent any other person who is acting in good faith and upon reasonable belief as a whistleblower.

No officer or employee of SANDAG shall use or threaten to use any official authority or influence to cause any adverse employment action as a reprisal against a SANDAG officer

or employee who acts as a whistleblower in good faith and with reasonable belief that improper conduct has occurred.

5. Administrative Complaint of Retaliation

Any officer or employee of SANDAG who believes that he or she has been subject to an adverse employment action as a result of being a whistleblower may file a complaint of retaliation with the IPA through the Whistleblower Hotline (www.sandaghotline.org or by phone at 1-800-644-9665) within one hundred and eighty (180) days of the alleged misconduct. The IPA shall thereupon investigate the complaint. If the Office of the Independent Auditor is named in the complaint, the complaint shall be directed to the SANDAG Office of General Counsel ([OGC](#)) for investigation, and independent counsel shall be contracted by OGC to perform the investigation. The investigation of a retaliation complaint should be completed in twelve (12) weeks or less, absent extraordinary circumstances. Any reports regarding retaliation are confidential and not subject to disclosure.

6. Burden of Establishing Retaliation

To establish retaliation, a whistleblower must demonstrate by a preponderance of the evidence that the whistleblower's engagement in activity protected in Section 1 was a substantial motivating factor for the adverse employment action. SANDAG may rebut this claim if it is demonstrated by a preponderance of the evidence that the same employment action would have been taken irrespective of the whistleblower's participation in protected activity.

7. Filing an Appeal

If a finding of retaliation is not sustained by the IPA's investigation, the whistleblower may file an appeal with the OGC challenging the decision. The OGC will notify the whistleblower upon receipt of a request for an appeal. OGC will then contract independent counsel to establish if there are sufficient grounds for an appeal. This will include a determination of at least one of the following:

The IPA's decision omitted material facts.

The IPA's decision is based on a finding of a material fact that is clearly erroneous.

The manner in which the IPA conducted the investigation resulted in prejudicial error.

If sufficient grounds for an appeal are found, independent counsel will further investigate the claims of retaliation.

8. Discipline

Any officer or employee of SANDAG who knowingly engages in conduct prohibited by this policy shall be disciplined, up to and including termination of employment.

9. Other Whistleblower Protection Laws

There are various Federal and state whistleblower protection laws that may be applicable to officers and employees of SANDAG, in addition to the protections set forth in this policy. It is the responsibility of the whistleblower to determine the appropriate channel or channels to utilize. The IPA only investigates matters related to alleged fraud, waste, abuse and gross mismanagement at SANDAG and retaliation by a SANDAG officer or employee as a result of a SANDAG employee reporting matters related to alleged fraud, waste, abuse and gross mismanagement at SANDAG.