

Eye on ED

Episode 8—Whistleblower Protections

[Intro] This is Eye on ED, your source for information about audits, investigations, and other work by the U.S. Department of Education Office of Inspector General. Tune in for the latest news on our efforts to find and stop fraud, waste, and abuse in Federal education programs, operations, and funding.

[Ryan Traher] Hello everyone, and welcome to another episode of Eye on ED, the official podcast of the U.S. Department of Education Office of Inspector General. I'm your host, Ryan Traher.

July 30 is National Whistleblower Appreciation Day—a day our nation celebrates the brave individuals who step forward to report fraud, corruption, and other wrongdoing in government programs, sometimes at great personal risk. Their contributions have helped to root out fraud and restore integrity in government programs. Fighting fraud and ensuring integrity in U.S. Department of Education programs and operations is part of our mission here at the Office of Inspector General. So this is the perfect time to talk about whistleblowers, whistleblower reprisal, and whistleblower protections involving Federal education programs and the role of the OIG in those efforts.

To help us do that today are two OIG staffers who are at the forefront of the OIG's whistleblower efforts: Antigone Potamianos, Counsel to the Inspector General, and Nicole Gardner, Special Agent in Charge of the OIG's Headquarters Operations. Antigone, Nicole—happy National Whistleblower Appreciation Day and thank you for being with us.

[Antigone Potamianos] Hey Ryan! I'm happy to be here to talk about this important topic.

[Nicole Gardner] Hi Ryan! It's great to be here.

[Ryan Traher] Okay, so Nicole and Antigone, the case can be made that anyone who reports fraud, corruption or other wrongdoing to the OIG is a whistleblower: they are alerting the OIG of possible malfeasance involving Federal education programs, operations, or funding. Do you agree with that?

[Nicole Gardner] Absolutely! And we encourage anyone who suspects fraud or wrongdoing in Federal education programs to report it to the ED OIG Hotline at oighotline.ed.gov. Our Hotline is available for your use 24/7. And boy is that Hotline busy! We receive up to 500 allegations of fraud each month, including allegations from individuals on the frontline administering and carrying out education programs, so we're talking about Department employees, and people who work in State education agencies, school districts, schools, colleges, universities, and other institutions of higher education. These people are insiders and they are uniquely positioned to identify and report fraud and wrongdoing.

[Antigone Potamianos] That's right, Nicole. However, they aren't whistleblowers in the technical legal sense unless and until they have been harmed because of what they reported, their disclosure. That's called reprisal, and Congress has determined that whistleblowers are entitled to legal protection against reprisals due to their coming forward with information that protects Federal funds from fraud, waste, and abuse.

[Ryan Traher] So Federal whistleblowers are only eligible for protections if they have been reprisal against for blowing the whistle on fraud or other wrongdoing.

[Antigone Potamianos] That's correct.

[Ryan Traher] Can you give us an example of what reprisal would look like?

[Nicole Gardner] Sure. Reprisal could be anything like a poor performance review, or a negative decision involving the employee's pay, benefits, or awards. It could be a change in position or work responsibilities like a demotion, or even getting fired from their job. Whistleblower protection laws make these types of retaliatory actions unlawful.

[Ryan Traher] Let's talk a little about those protections, understanding that there are a number of Federal laws in place to protect whistleblowers and we'd likely be here all day if we were to discuss all of them. But as this is a short podcast, Antigone, can you highlight the whistleblower protection laws most applicable to Federal education programs and operations?

[Antigone Potamianos] Sure. For Department of Education programs and operations, the two key whistleblower protection statutes are the Whistleblower Protection Act, or WPA, and the National Defense Authorization Act, or NDAA. The WPA protects whistleblowers who are current or former Federal employees or applicants for Federal jobs, and who make what is called a protected disclosure and suffer personnel actions as a result. The second key statute is the NDAA. The NDAA protects employees of Federal government contractors, grantees, subcontractors, subgrantees, and personal services contractors who were reprisal against for making a disclosure.

[Nicole Gardner] Correct Antigone. And at the Department of Education, these grantees and subgrantees would include employees of State education agencies, school districts, colleges and universities, or contractors that do business with the Department.

[Ryan Traher] Antigone, you mentioned protected disclosures. Are there specific types of disclosures that a whistleblower would need to make in order to get protections?

[Antigone Potamianos] Yes. Both statutes define protected disclosures to include reporting violations of law, rule, or regs. They can also include allegations around gross mismanagement or a gross waste of funds, or a substantial and specific danger to public health or safety. Or they can include other categories of misconduct as well. There is a difference between the two, though. NDAA disclosures mostly relate to contracts or grants, whereas WPA disclosures don't need that connection, and they can relate to agency misconduct more broadly.

[Ryan Traher] Does a protected disclosure need to be made to a specific official or entity in order for whistleblower protections to apply?

[Antigone Potamianos] Yes. The NDAA specifies to whom a disclosure must be made in order to receive whistleblower protections. This includes an OIG like us, Congress, the Government Accountability Office, a Federal employee responsible for managing the grant or contract, an authorized Department of Justice official, a court, or a management official at the employee's company or organization. The WPA, in contrast, is more broad and provides protections for whistleblowers even if the disclosure is made to the media in some circumstances.

[Ryan Traher] Nicole, what are some examples of whistleblower disclosures that the OIG receives?

[Nicole Gardner] Great question Ryan. Every OIG has a unique jurisdiction that's specific to the program that their agency administers. For the Department, they oversee the programs that generally relate to primary and secondary education, that's like K through 12, and also postsecondary education, that's like college and university level education. Most of the allegations we receive here at ED OIG are related to the administration of those programs like grant or contract fraud, steering of contracts or grants to friends and family, kickbacks, bribery, and things of that nature. The easiest way to describe it is stealing Federal funds that are meant to support the educational development of students.

[Ryan Traher] When filing their report with the OIG, does a whistleblower need to provide certain proof of fraud or other wrongdoing?

[Antigone Potamianos] No. A whistleblower doesn't need to prove their case or to provide particular evidence, only to make allegations that aren't frivolous and that they reasonably believe are true.

[Nicole Gardner] What we need a whistleblower to tell us are two main things: the details of their protected disclosure and the reprisal or adverse personnel action that occurred because of that disclosure.

[Ryan Traher] So if a person feels their employer retaliated against them for reporting wrongdoing, how do they file a whistleblower reprisal complaint to the OIG?

[Nicole Gardner] The best way to report is through the OIG Hotline that I mentioned earlier. Just go to our website, select Report Fraud, and follow the prompts. We intentionally made this process as easy as possible.

[Ryan Traher] So the whistleblower files a complaint with the OIG Hotline. Then what happens?

[Nicole Gardner] For the NDAA complaints, we're talking Department grantees, subgrantees, contractors, and subcontractors, OIG investigators talk with our attorneys—so that's my shop talks to Antigone's shop—and we investigate the matter. We'll interview the whistleblower, we'll interview and obtain information from the employer, whether that's a school district or contracting company, and we'll work with Department officials. Once we complete our investigation, we'll produce a report that summarizes all of our findings and present it to the Secretary of Education.

[Antigone Potamianos] Yeah, that's right. The Secretary reviews the report and makes a determination as to whether a reprisal occurred, and if so, he or she will impose a remedy. Remedies can range from reinstating the employee, to back pay or other damages, to attorneys' fees or costs.

[Ryan Traher] And the investigative process is different under the WPA for current and former Department Employees or job applicants?

[Antigone Potamianos] Yeah, it's different. Under the WPA, either the Office of Special Counsel or OIG investigate the reprisal. The Office of Special Counsel is an independent agency that works to protect government employees and whistleblowers. It can request or order the employing agency or Department to stay (that's freezing or suspending) any retaliatory personnel action, and to provide the whistleblower with an array of corrective action including reinstating an employee and providing them with compensatory damages, attorneys fees, and costs. The office also pursues disciplinary action for officials responsible for the reprisal against the reporting whistleblower. You can learn more about the office at its website: osc.gov.

[Ryan Traher] Great information, thanks Antigone. So Nicole, let me ask you this. As you've been conducting whistleblower investigations for almost two decades, what do you think the biggest obstacle is for a whistleblower to come forward to the OIG?

[Nicole Gardner] Well, fear of retaliation is a big reason why people don't report. And it's completely understandable. After all, when you think about it, bad things have already happened to this person for blowing the whistle—they've lost their job, been demoted, or passed over for a promotion. And now we're asking them to do report it again, at risk even worse things happening to them? But let me tell you, reporting the potential retaliation gives the OIG an opportunity to investigate the matter. And without an investigation no remedies can occur. Also, reporting retaliation may help prevent employers from retaliating against others in the future.

[Ryan Traher] So in addition to conducting whistleblower reprisal investigations, all OIGs are required to have a Whistleblower Protection Coordinator, correct?

[Nicole Gardner] Yes. The IG Act requires OIGs to have a Whistleblower Protection Coordinator. That Coordinator educates Department employees about protections and employee rights and any remedies they may have if they've been retaliated against. That Coordinator also provides information and trainings on identifying and reporting fraud.

[Antigone Potamianos] Right. What they don't do is provide legal advice. The Whistleblower Protection Coordinator is expressly prohibited from acting as a legal representative, agent, or advocate for current or former employees.

[Ryan Traher] Okay, we've talked about what a whistleblower is, what should be reported and how to do that, and whistleblower reprisal protections. Is there anything else you'd like to share with our listeners on this topic? Nicole, do you want to start us off?

[Nicole Gardner] Sure, Ryan. I'd really just like to add that whistleblowers perform a very important service in reporting what they believe is evidence of fraud, waste, abuse, or mismanagement. A lot of our success here at ED OIG in protecting the taxpayer dollars comes from reports from individuals just like you listening to this podcast. So, if you think you have information about wrongdoing related to Federal education programs, please contact our Hotline at oighotline.ed.gov or you can speak to a Hotline analyst at 1800-MIS-USED.

[Ryan Traher] Great points, Nicole. Antigone?

[Antigone Potamianos] So, I have several things I want to emphasize. First, whistleblowers, because they are insiders, are so important to our work and mission. They really are crucial. And for those of us who are Federal employees, we have an obligation to report, through the Ethical Principles and agency policies. I don't want to downplay how difficult it can be to report fraud involving your employer, but we need to remember it's a requirement. And Federal contractors and grantees are required to report also, by the way. That's why the OIG takes proactive steps to educate people about reporting fraud and whistleblower protections. And the very last thing I will end with is that whistleblower laws can get complex really fast and individual factual scenarios vary a lot. So I would advise anyone who has concerns about being reprisal against to get legal representation.

[Ryan Traher] And with National Whistleblower Appreciation Day right here, couldn't ask for a better sentiment. Nicole, Antigone—thank you so much for the work you are doing and for talking with us today.

[Nicole Gardner] Thanks, Ryan. I really enjoyed speaking with you today.

[Antigone Potamianos] Yeah, thanks for the opportunity, Ryan.

[Ryan Traher] And thank you to our listeners for tuning in. Remember, you can find more about whistleblower protections and reporting reprisal to the OIG on our [website](#).

And if you aren't doing so already, please be sure to follow us on social media. We're on Twitter [@EducationOIG](#) and on Facebook/Meta [@EducationOIG](#).

Until next time, I'm Ryan Traher with the U.S. Department of Education Office of Inspector General, and this has been Eye on ED.

Guest Bios

Nicole Gardner currently serves as the Special Agent in Charge of Headquarters Operations in the OIG's Investigation Services component. In this role, Nicole oversees the OIG's Investigative Operations and Investigative Support Services, which runs the OIG Hotline. She also heads up the Special Investigations Unit, which was established in 2020 to investigate misuse and theft of Federal education pandemic relief funding. Before her current position, Nicole served in several roles at the Department of Energy Office of Inspector General, including Hotline Assistant Special Agent in Charge, Operations Officer, and Special Agent. Nicole likes to brag that she began her Federal career as a William H. Helm fellow with the U.S. Department of Agriculture in 2001. She is also a proud Colorado native and considers herself an autism advocate.

Antigone Potamianos is the Counsel to the Inspector General and a member of the OIG's senior leadership team. Antigone leads the OIG's Legal Services component that is responsible for providing legal advice and services, and handling the OIG's Freedom of Information Act, and ethics programs. Before joining the OIG in August 2018, she served as Deputy Counsel to the Inspector General at U.S. Department of Agriculture, where she and her staff also provided legal services to the Council of Inspectors General for Integrity and Efficiency. She also served as Senior Counsel in the U.S. Department of Health and Human Services Office of Inspector General and the General Services Administration Office of Inspector General, where she worked on procurement fraud litigation matters, including assisting on significant civil False Claims Act settlements, and on matters involving oversight of the Medicaid and Medicare programs. Further, she worked in the U.S. Senate as a committee staff member for the Senate Governmental Affairs Committee (now the Senate Homeland Security and Governmental Affairs Committee). She earned her undergraduate degree from the College of William and Mary, and her law degree from George Mason School of Law.