

116TH CONGRESS
1ST SESSION

H. R. 2188

To provide accountability and protect whistleblowers in the Department of
Education.

IN THE HOUSE OF REPRESENTATIVES

APRIL 9, 2019

Mr. ROONEY of Florida (for himself and Mr. SMUCKER) introduced the following bill; which was referred to the Committee on Education and Labor, and in addition to the Committee on Oversight and Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide accountability and protect whistleblowers in the
Department of Education.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Department of Edu-
5 cation Accountability and Whistleblower Protection Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) The term “Department” means the Depart-
2 ment of Education.

3 (2) The term “Deputy Secretary” means the
4 Deputy Secretary of Education.

5 (3) The term “Office” means the Office of
6 Management of the Department of Education.

7 (4) The term “Secretary” means the Secretary
8 of Education.

9 (5) The term “senior executive position at the
10 Department” means an individual appointed under
11 section 401(d) of the Department of Education Or-
12 ganization Act (20 U.S.C. 3461).

13 (6) The term “supervisory employee” means an
14 employee of the Department who is a supervisor as
15 defined in section 7103(a)(10) of title 5, United
16 States Code.

17 (7) The term “whistleblower” means one who
18 makes a whistleblower disclosure.

19 (8) The term “whistleblower disclosure” means
20 any disclosure of information by an employee of the
21 Department or individual applying to become an em-
22 ployee of the Department which the employee or in-
23 dividual reasonably believes evidences—

24 (A) a violation of a law, rule, or regulation;

25 or

1 (B) gross mismanagement, a gross waste
2 of funds, an abuse of authority, or a substantial
3 and specific danger to public health or safety.

4 **SEC. 3. OFFICE OF MANAGEMENT.**

5 (a) FUNCTIONS.—(1) In addition to any other func-
6 tions, the functions of the Office are as follows:

7 (A) Advising the Secretary on all matters of the
8 Department relating to accountability, including ac-
9 countability of employees of the Department, retalia-
10 tion against whistleblowers, and such matters as the
11 Secretary considers similar and affect public trust at
12 the Department.

13 (B) Issuing reports and providing recommenda-
14 tions related to the duties described in subparagraph
15 (A).

16 (C) Receiving whistleblower disclosures.

17 (D) Referring whistleblower disclosures received
18 under subparagraph (C) for investigation to the Of-
19 fice of Inspector General, or other investigative enti-
20 ty, as appropriate, if the Deputy Secretary has rea-
21 son to believe the whistleblower disclosure is evi-
22 dence of a violation of a provision of law, mis-
23 management, gross waste of funds, or an abuse of
24 authority.

1 (E) Receiving and referring disclosures from
2 the Special Counsel for the Inspector General of the
3 Department, or such other person with investigatory
4 authority, as the Deputy Secretary considers appro-
5 priate.

6 (F) Recording, tracking, reviewing, and con-
7 firming implementation of recommendations from
8 audits and investigations carried out by the Inspec-
9 tor General of the Department, the Special Counsel,
10 and the Comptroller General of the United States,
11 including the imposition of disciplinary actions and
12 other corrective actions contained in such rec-
13 ommendations.

14 (G) Analyzing data from the Office and the Of-
15 fice of Inspector General telephone hotlines, other
16 whistleblower disclosures, disaggregated by facility
17 and area of health care if appropriate, and relevant
18 audits and investigations to identify trends and issue
19 reports to the Secretary based on analysis conducted
20 under this subparagraph.

21 (H) Receiving, reviewing, and investigating alle-
22 gations of misconduct, retaliation, or poor perform-
23 ance involving—

24 (i) an individual in a senior executive posi-
25 tion at the Department;

1 (ii) an individual employed in a confiden-
2 tial, policy-making, policy-determining, or pol-
3 icy-advocating position at the Department; or

4 (iii) a supervisory employee, if the allega-
5 tion involves retaliation against an employee for
6 making a whistleblower disclosure.

7 (I) Making such recommendations to the Sec-
8 retary for disciplinary action as the Deputy Sec-
9 retary considers appropriate after substantiating any
10 allegation of misconduct or poor performance pursu-
11 ant to an investigation carried out as described in
12 subparagraph (F) or (H).

13 (2) In carrying out the functions of the Office, the
14 Deputy Secretary shall ensure that the Office maintains
15 a toll-free telephone number and Internet website to re-
16 ceive anonymous whistleblower disclosures.

17 (3) In any case in which the Deputy Secretary re-
18 ceives a whistleblower disclosure from an employee of the
19 Department under paragraph (1)(C), the Deputy Sec-
20 retary may not disclose the identity of the employee with-
21 out the consent of the employee, except in accordance with
22 the provisions of section 552a of title 5, United States
23 Code, or as required by any other applicable provision of
24 Federal law.

1 (b) STAFF AND RESOURCES.—The Secretary shall
2 ensure that the Deputy Secretary has such staff, re-
3 sources, and access to information as may be necessary
4 to carry out the functions of the Office.

5 (c) RELATION TO OFFICE OF GENERAL COUNSEL.—
6 The Office shall not be an element of the Office of the
7 General Counsel and the Deputy Secretary may not report
8 to the General Counsel.

9 (d) REPORTS.—(1)(A) Not later than June 30 of
10 each calendar year, beginning with June 30, 2020, the
11 Deputy Secretary shall submit to the Committee on
12 Health, Education, Labor, and Pensions of the Senate and
13 the Committee on Education and Labor of the House of
14 Representatives a report on the activities of the Office
15 during the calendar year in which the report is submitted.

16 (B) Each report submitted under subparagraph (A)
17 shall include, for the period covered by the report, the fol-
18 lowing:

19 (i) A full and substantive analysis of the activi-
20 ties of the Office, including such statistical informa-
21 tion as the Deputy Secretary considers appropriate.

22 (ii) Identification of any issues reported to the
23 Secretary under subsection (b)(1)(G), including such
24 data as the Deputy Secretary considers relevant to

1 such issues and any trends the Deputy Secretary
2 may have identified with respect to such issues.

3 (iii) Identification of such concerns as the Dep-
4 uty Secretary may have regarding the size, staffing,
5 and resources of the Office and such recommenda-
6 tions as the Deputy Secretary may have for legisla-
7 tive or administrative action to address such con-
8 cerns.

9 (iv) Such recommendations as the Deputy Sec-
10 retary may have for legislative or administrative ac-
11 tion to improve—

12 (I) the process by which concerns are re-
13 ported to the Office; and

14 (II) the protection of whistleblowers within
15 the Department.

16 (v) Such other matters as the Deputy Secretary
17 considers appropriate regarding the functions of the
18 Office or other matters relating to the Office.

19 (2) If the Secretary receives a recommendation for
20 disciplinary action under subsection (b)(1)(I) and does not
21 take or initiate the recommended disciplinary action before
22 the date that is 60 days after the date on which the Sec-
23 retary received the recommendation, the Secretary shall
24 submit to the Committee on Health, Education, Labor,
25 and Pensions of the Senate and the Committee on Edu-

1 cation and Labor of the House of Representatives a de-
2 tailed justification for not taking or initiating such dis-
3 ciplinary action.

4 **SEC. 4. PROTECTION OF WHISTLEBLOWERS AS CRITERIA**
5 **IN EVALUATION OF SUPERVISORS.**

6 (a) DEVELOPMENT AND USE OF CRITERIA RE-
7 QUIRED.—The Secretary, in consultation with the Office
8 of the Principal Deputy Secretary, shall develop criteria
9 that—

10 (1) the Secretary shall use as a critical element
11 in any evaluation of the performance of a super-
12 visory employee; and

13 (2) promotes the protection of whistleblowers.

14 (b) PRINCIPLES FOR PROTECTION OF WHISTLE-
15 BLOWERS.—The criteria required by subsection (a) shall
16 include principles for the protection of whistleblowers,
17 such as the degree to which supervisory employees respond
18 constructively when employees of the Department report
19 concerns, take responsible action to resolve such concerns,
20 and foster an environment in which employees of the De-
21 partment feel comfortable reporting concerns to super-
22 visory employees or to the appropriate authorities.

1 **SEC. 5. TRAINING REGARDING WHISTLEBLOWER DISCLO-**
2 **SURES.**

3 (a) TRAINING.—Not less frequently than once every
4 two years, the Secretary, in coordination with the Whistle-
5 blower Protection Ombudsman designated under section
6 3(d)(1)(C) of the Inspector General Act of 1978 (5 U.S.C.
7 App.), shall provide to each employee of the Department
8 training regarding whistleblower disclosures, including—

9 (1) an explanation of each method established
10 by law in which an employee may file a whistle-
11 blower disclosure;

12 (2) the right of the employee to petition Con-
13 gress regarding a whistleblower disclosure in accord-
14 ance with section 7211 of title 5, United States
15 Code;

16 (3) an explanation that the employee may not
17 be prosecuted or reprimed against for disclosing in-
18 formation to Congress, the Inspector General, or an-
19 other investigatory agency in instances where such
20 disclosure is permitted by law, including under sec-
21 tion 552a of title 5, United States Code (commonly
22 referred to as the Privacy Act);

23 (4) an explanation of the language that is re-
24 quired to be included in all nondisclosure policies,
25 forms, and agreements pursuant to section

1 115(a)(1) of the Whistleblower Protection Enhance-
2 ment Act of 2012 (5 U.S.C. 2302 note); and

3 (5) the right of contractors to be protected from
4 reprisal for the disclosure of certain information
5 under section 4705 or 4712 of title 41, United
6 States Code.

7 (b) MANNER TRAINING IS PROVIDED.—The Sec-
8 retary shall ensure, to the maximum extent practicable,
9 that training provided under subsection (a) is provided in
10 person.

11 (c) CERTIFICATION.—Not less frequently than once
12 every two years, the Secretary shall provide training on
13 merit system protection in a manner that the Special
14 Counsel certifies as being satisfactory.

15 (d) PUBLICATION.—The Secretary shall publish on
16 the Internet website of the Department, and display
17 prominently at each facility of the Department, the rights
18 of an employee to make a whistleblower disclosure, includ-
19 ing the information described in paragraphs (1) through
20 (5) of subsection (a).

21 **SEC. 6. SENIOR EXECUTIVES: REMOVAL, DEMOTION, OR**
22 **SUSPENSION BASED ON PERFORMANCE OR**
23 **MISCONDUCT.**

24 (a) AUTHORITY.—(1) The Secretary of Education, in
25 consultation with the Office of Management, may, as pro-

1 vided in this section, reprimand or suspend, involuntarily
2 reassign, demote, or remove a covered individual from a
3 senior executive position at the Department if the Sec-
4 retary determines that the misconduct or performance of
5 the covered individual warrants such action.

6 (2) If the Secretary so removes such an individual,
7 the Secretary may remove the individual from the civil
8 service (as defined in section 2101(1) of title 5, United
9 States Code).

10 (b) RIGHTS AND PROCEDURES.—(1) A covered indi-
11 vidual who is the subject of an action under subsection
12 (a) is entitled to—

13 (A) advance notice of the action and a file con-
14 taining all evidence in support of the proposed ac-
15 tion;

16 (B) be represented by an attorney or other rep-
17 resentative of the covered individual's choice; and

18 (C) grieve the action in accordance with an in-
19 ternal grievance process that the Secretary, in con-
20 sultation with the Office of Management, shall es-
21 tablish for purposes of this subsection.

22 (2)(A) The aggregate period for notice, response, and
23 decision on an action under subsection (a) may not exceed
24 15 business days.

1 (B) The period for the response of a covered indi-
2 vidual to a notice under paragraph (1)(A) of an action
3 under subsection (a) shall be 7 business days.

4 (C) A decision under this paragraph on an action
5 under subsection (a) shall be issued not later than 15 busi-
6 ness days after notice of the action is provided to the cov-
7 ered individual under paragraph (1)(A). The decision shall
8 be in writing, and shall include the specific reasons there-
9 for.

10 (3) The Secretary shall ensure that the grievance
11 process established under paragraph (1)(C) takes fewer
12 than 21 days.

13 (4) A decision under paragraph (2) that is not
14 grieved, and a grievance decision under paragraph (3),
15 shall be final and conclusive.

16 (5) A covered individual adversely affected by a deci-
17 sion under paragraph (2) that is not grieved, or by a griev-
18 ance decision under paragraph (3), may obtain judicial re-
19 view of such decision.

20 (6) In any case in which judicial review is sought
21 under paragraph (5), the court shall review the record and
22 may set aside any Department action found to be—

23 (A) arbitrary, capricious, an abuse of discretion,
24 or otherwise not in accordance with a provision of
25 law;

1 (B) obtained without procedures required by a
2 provision of law having been followed; or

3 (C) unsupported by substantial evidence.

4 (c) RELATION TO OTHER PROVISIONS OF LAW.—
5 Section 3592(b)(1) of title 5, United States Code, and the
6 procedures under section 7543(b) of such title do not
7 apply to an action under subsection (a).

8 (d) DEFINITIONS.—In this section—

9 (1) the term “covered individual” means—

10 (A) a career appointee (as that term is de-
11 fined in section 3132(a)(4) of title 5, United
12 States Code); or

13 (B) any individual who occupies an admin-
14 istrative or executive position and who was ap-
15 pointed under title II of the Department of
16 Education Organization Act (20 U.S.C. 3411 et
17 seq.); and

18 (2) the term “misconduct” includes neglect of
19 duty, malfeasance, or failure to accept a directed re-
20 assignment or to accompany a position in a transfer
21 of function.

1 **SEC. 7. EMPLOYEES: REMOVAL, DEMOTION, OR SUSPEN-**
2 **SION BASED ON PERFORMANCE OR MIS-**
3 **CONDUCT.**

4 (a) IN GENERAL.—(1) The Secretary, in consultation
5 with the Office of Management, may remove, demote, or
6 suspend a covered individual who is an employee of the
7 Department if the Secretary determines the performance
8 or misconduct of the covered individual warrants such re-
9 moval, demotion, or suspension.

10 (2) If the Secretary so removes, demotes, or suspends
11 such a covered individual, the Secretary may—

12 (A) remove the covered individual from the civil
13 service (as defined in section 2101(1) of title 5,
14 United States Code);

15 (B) demote the covered individual by means of
16 a reduction in grade for which the covered individual
17 is qualified, that the Secretary determines is appro-
18 priate, and that reduces the annual rate of pay of
19 the covered individual; or

20 (C) suspend the covered individual.

21 (b) PAY OF CERTAIN DEMOTED INDIVIDUALS.—(1)
22 Notwithstanding any other provision of law, any covered
23 individual subject to a demotion under subsection (a)(2)
24 shall, beginning on the date of such demotion, receive the
25 annual rate of pay applicable to such grade.

1 (2)(A) A covered individual so demoted may not be
2 placed on administrative leave during the period during
3 which an appeal (if any) under this section is ongoing,
4 and may only receive pay if the covered individual reports
5 for duty or is approved to use accrued unused annual,
6 sick, family medical, military, or court leave.

7 (B) If a covered individual so demoted does not re-
8 port for duty or receive approval to use accrued unused
9 leave, such covered individual shall not receive pay or
10 other benefits pursuant to subsection (d)(5).

11 (c) PROCEDURE.—(1)(A) The aggregate period for
12 notice, response, and final decision in a removal, demotion,
13 or suspension under this section may not exceed 15 busi-
14 ness days.

15 (B) The period for the response of a covered indi-
16 vidual to a notice of a proposed removal, demotion, or sus-
17 pension under this section shall be 7 business days.

18 (C) Paragraph (3) of subsection (b) of section 7513
19 of title 5, United States Code, shall apply with respect
20 to a removal, demotion, or suspension under this section.

21 (D) The procedures in this subsection shall supersede
22 any collective bargaining agreement to the extent that
23 such agreement is inconsistent with such procedures.

24 (2) The Secretary shall issue a final decision with re-
25 spect to a removal, demotion, or suspension under this sec-

1 tion not later than 15 business days after the Secretary
2 provides notice, including a file containing all the evidence
3 in support of the proposed action, to the covered individual
4 of the removal, demotion, or suspension. The decision shall
5 be in writing and shall include the specific reasons there-
6 for.

7 (3) The procedures under chapter 43 of title 5,
8 United States Code, shall not apply to a removal, demo-
9 tion, or suspension under this section.

10 (4)(A) Subject to subparagraph (B) and subsection
11 (d), any removal or demotion under this section, and any
12 suspension of more than 14 days under this section, may
13 be appealed to the Merit Systems Protection Board, which
14 shall refer such appeal to an administrative judge pursu-
15 ant to section 7701(b)(1) of title 5, United States Code.

16 (B) An appeal under subparagraph (A) of a removal,
17 demotion, or suspension may only be made if such appeal
18 is made not later than 10 business days after the date
19 of such removal, demotion, or suspension.

20 (d) EXPEDITED REVIEW.—(1) Upon receipt of an ap-
21 peal under subsection (c)(4)(A), the administrative judge
22 shall expedite any such appeal under section 7701(b)(1)
23 of title 5, United States Code, and, in any such case, shall
24 issue a final and complete decision not later than 180 days
25 after the date of the appeal.

1 (2)(A) Notwithstanding section 7701(c)(1)(B) of title
2 5, United States Code, the administrative judge shall up-
3 hold the decision of the Secretary to remove, demote, or
4 suspend an employee under subsection (a) if the decision
5 is supported by substantial evidence.

6 (B) Notwithstanding title 5, United States Code, or
7 any other provision of law, if the decision of the Secretary
8 is supported by substantial evidence, the administrative
9 judge shall not mitigate the penalty prescribed by the Sec-
10 retary.

11 (3)(A) The decision of the administrative judge under
12 paragraph (1) may be appealed to the Merit Systems Pro-
13 tection Board.

14 (B) Notwithstanding section 7701(c)(1)(B) of title 5,
15 United States Code, the Merit Systems Protection Board
16 shall uphold the decision of the Secretary to remove, de-
17 mote, or suspend an employee under subsection (a) if the
18 decision is supported by substantial evidence.

19 (C) Notwithstanding title 5, United States Code, or
20 any other provision of law, if the decision of the Secretary
21 is supported by substantial evidence, the Merit Systems
22 Protection Board shall not mitigate the penalty prescribed
23 by the Secretary.

24 (4) In any case in which the administrative judge
25 cannot issue a decision in accordance with the 180-day

1 requirement under paragraph (1), the Merit Systems Pro-
2 tection Board shall, not later than 14 business days after
3 the expiration of the 180-day period, submit to the Com-
4 mittee on Health, Education, Labor, and Pensions of the
5 Senate and the Committee on Education and Labor of the
6 House of Representatives a report that explains the rea-
7 sons why a decision was not issued in accordance with
8 such requirement.

9 (5) A decision of the Merit Systems Protection Board
10 under paragraph (3) may be appealed to the United States
11 Court of Appeals for the Federal Circuit pursuant to sec-
12 tion 7703 of title 5, United States Code, or to any court
13 of appeals of competent jurisdiction pursuant to sub-
14 section (b)(1)(B) of such section.

15 (6) The Merit Systems Protection Board may not
16 stay any removal or demotion under this section, except
17 as provided in section 1214(b) of title 5, United States
18 Code.

19 (7) During the period beginning on the date on which
20 a covered individual appeals a removal from the civil serv-
21 ice under subsection (c) and ending on the date that the
22 United States Court of Appeals for the Federal Circuit
23 issues a final decision on such appeal, such covered indi-
24 vidual may not receive any pay, awards, bonuses, incen-
25 tives, allowances, differentials, student loan repayments,

1 special payments, or benefits related to the employment
2 of the individual by the Department.

3 (8) To the maximum extent practicable, the Secretary
4 shall provide to the Merit Systems Protection Board such
5 information and assistance as may be necessary to ensure
6 an appeal under this subsection is expedited.

7 (9) If an employee prevails on appeal under this sec-
8 tion, the employee shall be entitled to backpay (as pro-
9 vided in section 5596 of title 5, United States Code).

10 (10) If an employee who is subject to a collective bar-
11 gaining agreement chooses to grieve an action taken under
12 this section through a grievance procedure provided under
13 the collective bargaining agreement, the timelines and pro-
14 cedures set forth in subsection (c) and this subsection
15 shall apply.

16 (e) WHISTLEBLOWER PROTECTION.—(1) In the case
17 of a covered individual seeking corrective action (or on be-
18 half of whom corrective action is sought) from the Office
19 of Special Counsel based on an alleged prohibited per-
20 sonnel practice described in section 2302(b) of title 5,
21 United States Code, the Secretary may not remove, de-
22 mote, or suspend such covered individual under subsection
23 (a) without the approval of the Special Counsel under sec-
24 tion 1214(f) of such title.

1 (2) In the case of a covered individual who has made
2 a whistleblower disclosure to the Office of Management
3 of the Department of Education, the Secretary may not
4 remove, demote, or suspend such covered individual under
5 subsection (a) until—

6 (A) in the case in which the Deputy Secretary
7 determines to refer the whistleblower disclosure
8 under section 3(a)(1)(D) to an office or other inves-
9 tigative entity, a final decision with respect to the
10 whistleblower disclosure has been made by such of-
11 fice or other investigative entity; or

12 (B) in the case in which the Deputy Secretary
13 determines not to refer the whistleblower disclo-
14 sure under such section, the Assistant Secretary
15 makes such determination.

16 (f) TERMINATION OF INVESTIGATIONS BY OFFICE OF
17 SPECIAL COUNSEL.—(1) Notwithstanding any other pro-
18 vision of law, the Special Counsel (established by section
19 1211 of title 5, United States Code) may terminate an
20 investigation of a prohibited personnel practice alleged by
21 an employee or former employee of the Department after
22 the Special Counsel provides to the employee or former
23 employee a written statement of the reasons for the termi-
24 nation of the investigation.

1 (2) Such statement may not be admissible as evidence
2 in any judicial or administrative proceeding without the
3 consent of such employee or former employee.

4 (g) VACANCIES.—In the case of a covered individual
5 who is removed or demoted under subsection (a), to the
6 maximum extent feasible, the Secretary shall fill the va-
7 cancy arising as a result of such removal or demotion.

8 (h) DEFINITIONS.—In this section—

9 (1) the term “covered individual” means an in-
10 individual occupying a position at the Department, but
11 does not include—

12 (A) an individual occupying a senior execu-
13 tive position at the Department;

14 (B) an individual appointed under title II
15 of the Department of Education Organization
16 Act (20 U.S.C. 3411 et seq.);

17 (C) an individual who has not completed a
18 probationary or trial period; or

19 (D) a political appointee;

20 (2) the term “suspend” means the placing of an
21 employee, for disciplinary reasons, in a temporary
22 status without duties and pay for a period in excess
23 of 14 days;

1 (3) the term “grade” has the meaning given
2 such term in section 7511(a) of title 5, United
3 States Code;

4 (4) the term “misconduct” includes neglect of
5 duty, malfeasance, or failure to accept a directed re-
6 assignment or to accompany a position in a transfer
7 of function; and

8 (5) the term “political appointee” means an in-
9 dividual who is—

10 (A) employed in a position described under
11 sections 5312 through 5316 of title 5, United
12 States Code (relating to the Executive Sched-
13 ule);

14 (B) a limited term appointee, limited emer-
15 gency appointee, or noncareer appointee in the
16 Senior Executive Service, as defined under
17 paragraphs (5), (6), and (7), respectively, of
18 section 3132(a) of title 5, United States Code;
19 or

20 (C) employed in a position of a confidential
21 or policy-determining character under schedule
22 C of subpart C of part 213 of title 5, Code of
23 Federal Regulations, or successor regulation.

1 **SEC. 8. REDUCTION OF BENEFITS OF EMPLOYEES CON-**
2 **VICTED OF CERTAIN CRIMES.**

3 (a) REDUCTION OF ANNUITY FOR REMOVED EM-
4 PLOYEE.—(1) The Secretary shall order that the covered
5 service of an employee of the Department removed from
6 a position for performance or misconduct under any provi-
7 sion of law shall not be taken into account for purposes
8 of calculating an annuity with respect to such individual
9 under chapter 83 or chapter 84 of title 5, United States
10 Code, if—

11 (A) the Secretary determines that the individual
12 is convicted of a felony (and the conviction is final)
13 that influenced the individual's performance while
14 employed in the position;

15 (B) before such order is made, the individual is
16 afforded—

17 (i) notice of the proposed order; and

18 (ii) an opportunity to respond to the pro-
19 posed order by not later than ten business days
20 following receipt of such notice; and

21 (C) the Secretary issues the order—

22 (i) in the case of a proposed order to which
23 an individual responds under subparagraph
24 (B)(ii), not later than five business days after
25 receiving the response of the individual; or

1 (ii) in the case of a proposed order to
2 which an individual does not respond, not later
3 than 15 business days after the Secretary pro-
4 vides notice to the individual under subpara-
5 graph (B)(i).

6 (2) Any individual with respect to whom an annuity
7 is reduced under this subsection may appeal the reduction
8 to the Director of the Office of Personnel Management
9 pursuant to such regulations as the Director may pre-
10 scribe for purposes of this subsection.

11 (b) REDUCTION OF ANNUITY FOR RETIRED EM-
12 PLOYEE.—(1) The Secretary may order that the covered
13 service of an individual who the Secretary proposes to re-
14 move for performance or misconduct under any provision
15 of law but who leaves employment at the Department prior
16 to the issuance of a final decision with respect to such
17 action shall not be taken into account for purposes of cal-
18 culating an annuity with respect to such individual under
19 chapter 83 or chapter 84 of title 5, United States Code,
20 if—

21 (A) the Secretary determines that individual is
22 convicted of a felony (and the conviction is final)
23 that influenced the individual's performance while
24 employed in the position;

1 (B) before such order is made, the individual is
2 afforded—

3 (i) notice of the proposed order; and

4 (ii) an opportunity to respond to the pro-
5 posed order by not later than ten business days
6 following receipt of such notice; and

7 (C) the Secretary issues the order—

8 (i) in the case of a proposed order to which
9 an individual responds under subparagraph
10 (B)(ii), not later than five business days after
11 receiving the response of the individual; or

12 (ii) in the case of a proposed order to
13 which an individual does not respond, not later
14 than 15 business days after the Secretary pro-
15 vides notice to the individual under subpara-
16 graph (B)(i).

17 (2) Upon the issuance of an order by the Secretary
18 under paragraph (1), the individual shall have an oppor-
19 tunity to appeal the order to the Director of the Office
20 of Personnel Management before the date that is seven
21 business days after the date of such issuance.

22 (3) The Director of the Office of Personnel Manage-
23 ment shall make a final decision with respect to an appeal
24 under paragraph (2) within 30 business days of receiving
25 the appeal.

1 (c) ADMINISTRATIVE REQUIREMENTS.—Not later
2 than 37 business days after the Secretary issues a final
3 order under subsection (a) or (b) with respect to an indi-
4 vidual, the Director of the Office of Personnel Manage-
5 ment shall recalculate the annuity of the individual.

6 (d) LUMP-SUM ANNUITY CREDIT.—Any individual
7 with respect to whom an annuity is reduced under sub-
8 section (a) or (b) shall be entitled to be paid so much of
9 such individual’s lump-sum credit as is attributable to the
10 period of covered service.

11 (e) SPOUSE OR CHILDREN EXCEPTION.—(1) The
12 Secretary, in consultation with the Director of the Office
13 of Personnel Management, shall prescribe regulations that
14 may provide for the payment to the spouse or children
15 of any individual referred to in subsection (a) or (b) of
16 any amounts which (but for this subsection) would other-
17 wise have been nonpayable by reason of such subsections.

18 (2) Regulations prescribed under paragraph (1) shall
19 be consistent with the requirements of sections 8332(o)(5)
20 and 8411(l)(5) of title 5, United States Code, as the case
21 may be.

22 (f) DEFINITIONS.—In this section—

23 (1) the term “covered service” means, with re-
24 spect to an individual subject to a removal for per-
25 formance or misconduct under section 4 or any

1 other provision of law, the period of service begin-
2 ning on the date that the Secretary determines
3 under such applicable provision that the individual
4 engaged in activity that gave rise to such action and
5 ending on the date that the individual is removed
6 from or leaves a position of employment at the De-
7 partment prior to the issuance of a final decision
8 with respect to such action;

9 (2) the term “lump-sum credit” has the mean-
10 ing given such term in section 8331(8) or section
11 8401(19) of title 5, United States Code, as the case
12 may be; and

13 (3) the term “service” has the meaning given
14 such term in section 8331(12) or section 8401(26)
15 of title 5, United States Code, as the case may be.

16 **SEC. 9. RECOUPMENT OF BONUSES OR AWARDS PAID TO**
17 **EMPLOYEES OF DEPARTMENT.**

18 (a) IN GENERAL.—Notwithstanding any other provi-
19 sion of law, the Secretary may issue an order directing
20 an employee of the Department to repay the amount, or
21 a portion of the amount, of any award or bonus paid to
22 the employee under title 5, United States Code, including
23 under chapter 45 or 53 of such title, section 141(d)(5)(B)
24 of the Higher Education Act of 1965 (20 U.S.C.
25 1018(d)(5)(B)), or another provision of Federal law, if—

1 (1) the Secretary determines that the individual
2 engaged in misconduct or poor performance prior to
3 payment of the award or bonus, and that such
4 award or bonus would not have been paid, in whole
5 or in part, had the misconduct or poor performance
6 been known prior to payment;

7 (2) before such repayment, the employee is af-
8 forded—

9 (A) notice of the proposed order; and

10 (B) an opportunity to respond to the pro-
11 posed order by not later than 10 business days
12 after the receipt of such notice; and

13 (3) the Secretary issues the order—

14 (A) in the case of a proposed order to
15 which an individual responds under paragraph
16 (2)(B), not later than five business days after
17 receiving the response of the individual; or

18 (B) in the case of a proposed order to
19 which an individual does not respond, not later
20 than 15 business days after the Secretary pro-
21 vides notice to the individual under paragraph
22 (2)(A).

23 (b) APPEAL OF ORDER OF SECRETARY.—(1) Upon
24 the issuance of an order by the Secretary under subsection
25 (a) with respect to an individual, the individual shall have

1 (A) With respect to the first offense, an adverse
2 action that is not less than a 12-day suspension and
3 not more than removal.

4 (B) With respect to the second offense, re-
5 moval.

6 (2)(A) An employee against whom an adverse action
7 under paragraph (1) is proposed is entitled to written no-
8 tice.

9 (B)(i) An employee who is notified under subpara-
10 graph (A) of being the subject of a proposed adverse ac-
11 tion under paragraph (1) is entitled to 10 days following
12 such notification to answer and furnish evidence in sup-
13 port of the answer.

14 (ii) If the employee does not furnish any such evi-
15 dence as described in clause (i) or if the Secretary deter-
16 mines that such evidence is not sufficient to reverse the
17 determination to propose the adverse action, the Secretary
18 shall carry out the adverse action following such 10-day
19 period.

20 (C) Paragraphs (1) and (2) of subsection (b) of sec-
21 tion 7513 of title 5, United States Code, subsection (c)
22 of such section, paragraphs (1) and (2) of subsection (b)
23 of section 7543 of such title, and subsection (c) of such
24 section shall not apply with respect to an adverse action
25 carried out under paragraph (1).

1 (b) LIMITATION ON OTHER ADVERSE ACTIONS.—
2 With respect to a prohibited personnel action described in
3 subsection (c), if the Secretary carries out an adverse ac-
4 tion against a supervisory employee, the Secretary may
5 carry out an additional adverse action under this section
6 based on the same prohibited personnel action if the total
7 severity of the adverse actions do not exceed the level spec-
8 ified in subsection (a).

9 (c) PROHIBITED PERSONNEL ACTION DESCRIBED.—
10 A prohibited personnel action described in this subsection
11 is any of the following actions:

12 (1) Taking or failing to take a personnel action
13 in violation of section 2302 of title 5, United States
14 Code, against an employee relating to the em-
15 ployee—

16 (A) making a whistleblower disclosure to
17 the Assistant Secretary for Accountability and
18 Whistleblower Protection, the Inspector General
19 of the Department, the Special Counsel, or
20 Congress;

21 (B) providing information or participating
22 as a witness in an investigation of a whistle-
23 blower disclosure made to the Assistant Sec-
24 retary for Accountability and Whistleblower

1 Protection, the Inspector General of the De-
2 partment, the Special Counsel, or Congress;

3 (C) participating in an audit or investiga-
4 tion by the Comptroller General of the United
5 States;

6 (D) refusing to perform an action that is
7 unlawful or prohibited by the Department; or

8 (E) engaging in communications that are
9 related to the duties of the position or are oth-
10 erwise protected.

11 (2) Preventing or restricting an employee from
12 making an action described in any of subparagraphs
13 (A) through (E) of paragraph (1).

14 (3) Conducting a negative peer review or open-
15 ing a retaliatory investigation because of an activity
16 of an employee that is protected by section 2302 of
17 title 5, United States Code.

18 (4) Requesting a contractor to carry out an ac-
19 tion that is prohibited by section 4705(b) or section
20 4712(a)(1) of title 41, as the case may be.

21 **SEC. 11. RECOUPMENT OF RELOCATION EXPENSES PAID**
22 **ON BEHALF OF EMPLOYEES OF DEPART-**
23 **MENT.**

24 (a) IN GENERAL.—Notwithstanding any other provi-
25 sion of law, the Secretary may issue an order directing

1 an employee of the Department to repay the amount, or
2 a portion of the amount, paid to or on behalf of the em-
3 ployee under title 5, United States Code, for relocation
4 expenses, including any expenses under section 5724 or
5 5724a of such title, if—

6 (1) the Secretary determines that relocation ex-
7 penses were paid following an act of fraud or mal-
8 feasance that influenced the authorization of the re-
9 location expenses;

10 (2) before such repayment, the employee is af-
11 forded—

12 (A) notice of the proposed order; and

13 (B) an opportunity to respond to the pro-
14 posed order not later than ten business days
15 following the receipt of such notice; and

16 (3) the Secretary issues the order—

17 (A) in the case of a proposed order to
18 which an individual responds under paragraph
19 (2)(B), not later than five business days after
20 receiving the response of the individual; or

21 (B) in the case of a proposed order to
22 which an individual does not respond, not later
23 than 15 business days after the Secretary pro-
24 vides notice to the individual under paragraph
25 (2)(A).

1 (b) APPEAL OF ORDER OF SECRETARY.—(1) Upon
2 the issuance of an order by the Secretary under subsection
3 (a) with respect to an individual, the individual shall have
4 an opportunity to appeal the order to the Director of the
5 Office of Personnel Management before the date that is
6 seven business days after the date of such issuance.

7 (2) The Director shall make a final decision with re-
8 spect to an appeal under paragraph (1) within 30 days
9 after receiving such appeal.

10 (c) EFFECTIVE DATE.—This section shall apply with
11 respect to an amount paid by the Secretary to or on behalf
12 of an employee of the Department for relocation expenses
13 on or after the date of the enactment of this Act.

14 (d) CONSTRUCTION.—Nothing in this Act or the
15 amendments made by this Act may be construed to modify
16 the certification issued by the Office of Personnel Manage-
17 ment and the Office of Management and Budget regarding
18 the performance appraisal system of the Senior Executive
19 Service of the Department.

20 **SEC. 12. IMPROVEMENT OF TRAINING FOR SUPERVISORS.**

21 (a) IN GENERAL.—The Secretary of Education shall
22 provide to each employee of the Department of Education
23 who is employed as a supervisor periodic training on the
24 following:

1 (2) submit to the Committee on Health, Edu-
2 cation, Labor, and Pensions of the Senate and the
3 Committee on Education and Labor of the House of
4 Representatives a report on the findings of the Sec-
5 retary with respect to the measurement and assess-
6 ment carried out under paragraph (1).

7 (b) ELEMENTS.—The assessment required by sub-
8 section (a)(1) shall include the following:

9 (1) With respect to engagement, trends in mo-
10 rale of individuals in senior executive positions at
11 the Department and individuals aspiring to senior
12 executive positions.

13 (2) With respect to promotions—

14 (A) whether the Department is experi-
15 encing an increase or decrease in the number of
16 employees participating in leadership develop-
17 ment and candidate development programs with
18 the intention of becoming candidates for senior
19 executive positions at the Department; and

20 (B) trends in applications to senior execu-
21 tive positions at the Department.

22 (3) With respect to retention—

23 (A) trends in retirement rates of individ-
24 uals in senior executive positions at the Depart-
25 ment;

1 (B) trends in quit rates of individuals in
2 senior executive positions at the Department;

3 (C) rates of transfer of—

4 (i) individuals from other Federal
5 agencies into senior executive positions at
6 the Department; and

7 (ii) individuals from senior executive
8 positions at the Department to other Fed-
9 eral agencies; and

10 (D) trends in total loss rates by job func-
11 tion.

12 (4) With respect to disciplinary processes—

13 (A) regarding individuals in senior execu-
14 tive positions at the Department who are the
15 subject of disciplinary action—

16 (i) the length of the disciplinary proc-
17 ess in days for such individuals both before
18 the date of the enactment of this Act and
19 under the provisions of this Act described
20 in subsection (a)(1); and

21 (ii) the extent to which appeals by
22 such individuals are upheld under such
23 provisions as compared to before the date
24 of the enactment of this Act;

1 (B) the components or offices of the De-
2 partment which experience the greatest number
3 of proposed adverse actions against individuals
4 in senior executive positions at the Department
5 and components and offices which experience
6 the least relative to the size of the components
7 or offices' total number of senior executive posi-
8 tions at the Department;

9 (C) the tenure of individuals in senior ex-
10 ecutive positions at the Department who are the
11 subject of disciplinary action;

12 (D) whether the individuals in senior exec-
13 utive positions at the Department who are the
14 subject of disciplinary action have previously
15 been disciplined; and

16 (E) the number of instances of disciplinary
17 action taken by the Secretary against individ-
18 uals in senior executive positions at the Depart-
19 ment as compared to governmentwide discipline
20 against individuals in Senior Executive Service
21 positions (as defined in section 3132(a) of title
22 5, United States Code) as a percentage of the
23 total number of individuals in senior executive
24 positions at the Department and Senior Execu-
25 tive Service positions (as so defined).

1 (5) With respect to hiring—

2 (A) the degree to which the skills of newly
3 hired individuals in senior executive positions at
4 the Department are appropriate with respect to
5 the needs of the Department;

6 (B) the types of senior executive positions
7 at the Department most commonly filled under
8 the authorities in the provisions described in
9 subsection (a)(1);

10 (C) the number of senior executive posi-
11 tions at the Department filled by hires outside
12 of the Department compared to hires from
13 within the Department;

14 (D) the length of time to fill a senior exec-
15 utive position at the Department and for a new
16 hire to begin working in a new senior executive
17 position;

18 (E) the mission-critical deficiencies filled
19 by newly hired individuals in senior executive
20 positions at the Department and the connection
21 between mission-critical deficiencies filled under
22 the provisions described in subsection (a) and
23 annual performance of the Department;

24 (F) the satisfaction of applicants for senior
25 executive positions at the Department with the

1 hiring process, including the clarity of job an-
2 nouncements, reasons for withdrawal of applica-
3 tions, communication regarding status of appli-
4 cations, and timeliness of hiring decision; and

5 (G) the satisfaction of newly hired individ-
6 uals in senior executive positions at the Depart-
7 ment with the hiring process and the process of
8 joining and becoming oriented with the Depart-
9 ment.

10 **SEC. 14. MEASUREMENT OF DEPARTMENT OF EDUCATION**

11 **DISCIPLINARY PROCESS OUTCOMES AND EF-**
12 **FECTIVENESS.**

13 (a) MEASURING AND COLLECTING.—

14 (1) IN GENERAL.—The Secretary of Education,
15 in consultation with the Office of Management, shall
16 measure and collect information on the outcomes of
17 disciplinary actions carried out by the Department
18 of Education during the three-year period ending on
19 the date of the enactment of this Act and the effec-
20 tiveness of such actions.

21 (2) ELEMENTS.—In measuring and collecting
22 pursuant to paragraph (1), the Secretary shall meas-
23 ure and collect information regarding the following:

24 (A) The average time from the initiation of
25 an adverse action against an employee at the

1 Department to the final resolution of that ac-
2 tion.

3 (B) The number of distinct steps and lev-
4 els of review within the Department involved in
5 the disciplinary process and the average length
6 of time required to complete these steps.

7 (C) The rate of use of alternate discipli-
8 nary procedures compared to traditional dis-
9 ciplinary procedures and the frequency with
10 which employees who are subject to alternative
11 disciplinary procedures commit additional of-
12 fenses.

13 (D) The number of appeals from adverse
14 actions filed against employees of the Depart-
15 ment, the number of appeals upheld, and the
16 reasons for which the appeals were upheld.

17 (E) The use of paid administrative leave
18 during the disciplinary process and the length
19 of such leave.

20 (b) REPORT.—

21 (1) IN GENERAL.—Not later than December 31,
22 2019, the Secretary shall submit to the appropriate
23 committees of Congress a report on the disciplinary
24 procedures and actions of the Department.

1 (2) CONTENTS.—The report submitted under
2 paragraph (1) shall include the following:

3 (A) The information collected under sub-
4 section (a).

5 (B) The findings of the Secretary with re-
6 spect to the measurement and collection carried
7 out under subsection (a).

8 (C) An analysis of the disciplinary proce-
9 dures and actions of the Department.

10 (D) Suggestions for improving the discipli-
11 nary procedures and actions of the Department.

12 (E) Such other matters as the Secretary
13 considers appropriate.

14 (3) APPROPRIATE COMMITTEES OF CON-
15 GRESS.—In this subsection, the term “appropriate
16 committees of Congress” means—

17 (A) the Committee on Appropriations and
18 the Committee on Health, Education, Labor,
19 and Pensions of the Senate; and

20 (B) the Committee on Appropriations and
21 the Committee on Education and Labor of the
22 House of Representatives.

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