

[] Required
 [**X**] **Local**
 [] Notice

DISCLOSURE OF WRONGFUL CONDUCT

The BOCES Board expects officers and employees of the BOCES to fulfill the public's trust and to conduct themselves in an honorable manner, abiding by all BOCES policies and regulations and by all applicable state and federal laws and regulations.

However, when BOCES officers or employees know or have reasonable cause to believe that serious instances of wrongful conduct have occurred, they should report such wrongful conduct to the District Superintendent or the Board. For purposes of this policy, the term "wrongful conduct" shall be defined to include:

- theft of BOCES money, property, or resources;
- misuse of authority for personal gain or other non-district purpose;
- fraud;
- violations of applicable federal and state laws and regulations; and/or
- serious violations of BOCES policy, regulation, and/or procedure.

Disclosure and Investigation

Employees and officers who know or have reasonable cause to believe that wrongful conduct has occurred or is occurring shall report such mismanagement, fraud or abuse to the District Superintendent. Employees and officers shall report to the Board, if the allegation involves the District Superintendent. Upon receiving a report of alleged wrongful conduct, the BOCES shall take prompt steps to conduct an investigation.

Staff members who have reasonable cause to believe that a violation of state testing procedures has occurred by a certified educator, or non-certified individual involved in the state testing program, must report their concerns to the State Education Department (SED) in the manner prescribed by the Commissioner of Education, and must also report concerns to the District Superintendent or Board of Education. Any Building Principal receiving such a report shall relay this information to the District Superintendent.

The District Superintendent or other designee such as School Attorney, or Internal Auditor shall maintain a written record of the allegation, conduct an investigation to ensure that the appropriate professionals investigate the disclosure, and notify the Board when appropriate to do so.

Except as otherwise provided in either state and/or federal law, the Board-designated officer shall make all reasonable attempts to protect the identity of the employee making the disclosure in a confidential manner, as long as doing so does not interfere with conducting an investigation of the specific allegations or taking corrective action.

The BOCES shall not take adverse employment action against an employee who has notified the BOCES of wrongdoing, allowing the BOCES the opportunity to investigate and correct the misconduct. The BOCES shall not take adverse action against an employee who has reported misconduct when mandated to do so by federal or state law or regulation.

Pursuant to section 75-b of the Civil Service Law, an employee or officer who provides disclosure of wrongful conduct that presents a substantial and specific danger to the public health or safety or which he or she reasonably believes to be true and improper on the part of the Board or the BOCES shall have “whistleblower protection” against retaliation in the nature of adverse action affecting compensation, appointment, promotion, transfer, assignment, reassignment or evaluation of performance.

Pursuant to section 3028-d of the Education law, an employee who has reasonable cause to suspect that the fiscal practices or action of an officer or employee of the BOCES violates any local, state, or federal law, rule or regulation relating to the financial practices of the BOCES, and who in good faith reports such information to a BOCES official, Office of the State Comptroller; Commissioner of Education or law enforcement authorities shall have immunity from any civil liability that may arise from the making of such report. Further, no BOCES employee or officer may take, request or cause a retaliatory action against any employee who makes such a report.

Any employee or officer who is concerned that retaliation for providing information regarding wrongful conduct has occurred or is occurring should report this to the District Superintendent or the Board.

Complaints of Reprisal

An employee who has been subject to an adverse employment action based on his or her prior disclosure of alleged or actual wrongful conduct may contest the action by filing a written complaint of reprisal with the Board President. The Board President, or his/her designee, will review the complaint expeditiously to determine:

- whether the complainant made a disclosure of alleged wrongful conduct before an adverse employment action was taken;
- whether the responding party could reasonably have been construed to have had knowledge of the disclosure and the identity of the disclosing employee;
- whether the complainant has in fact suffered an adverse employment action after having made the disclosure; and
- whether the complainant alleges that adverse employment action occurred as a result of the disclosure.

If the designee determines that all of the above elements are present, he or she shall appoint a review officer or panel to investigate the claim and make a recommendation to the Board. At the time of appointment, the designee shall inform the complainant and the respondent, in writing, of:

- the intent to proceed with an investigation;
- the specific allegations to be investigated;
- the appointment of the review officer or panel; and
- the opportunity of each party to support or respond, in writing, to the allegation.

Once the review officer or panel has conducted a review and considers the investigation to be complete, the officer or panel will notify the designee of its completion. From the date of that notice, the review officer has thirty (30) days to report his or her findings and make any recommendations he or she deems appropriate to the designee. The designee, in conferral with the appropriate administrator shall issue a letter of findings to both the complainant and the respondent.

The decision of the review officer or panel is binding.

Nothing in this policy is intended to interfere with legitimate employment decisions.

The District Superintendent shall establish regulations necessary to implement this policy.

This policy and accompanying regulations shall be published in employee handbooks, posted in employee lounges and given to all employees with fiscal accounting and/or money handling responsibilities on an annual basis.

The District Superintendent, the Auditor, the School Attorney and others involved in implementing this policy shall meet with the Board once a year to evaluate the effectiveness of this policy and to make appropriate adjustments, if any, to the policy and accompanying regulations.

Dissemination and Review

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Ref: Civil Service Law §75-b
Education Law §3028-d
Labor Law §740
Garrity v. University at Albany, 301 A.D. 2d 1015 (3rd Dept. 2003)
Matter of Brey v. Bd. of Educ., 245 A.D. 2d (3rd Dept. 1997)

Adoption date: May 16, 2011

Amended: July 25, 2016