

POLICY

2015

Personnel & Negotiations

DISCLOSURE OF WRONGFUL CONDUCT (Whistleblower Policy)

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

However, when district officers or employees know or have reasonable cause to believe that serious instances of wrongful conduct (e.g., mismanagement of district resources, unethical behavior, violations of law or regulation, and/or abuse of authority) have occurred, they should report such wrongful conduct to the Board or one of its designated officers.

For purposes of this policy, the term "wrongful conduct" shall be defined to include:

- Theft of district money, property, or resources;
- Misuse of authority for personal gain or other non-district purpose;
- Fraud;
- Actions that compromise the security and integrity of the district's or state's testing program;
- Violations of applicable federal and state laws and regulations; and/or serious violations of district policy, regulation, and/or procedure.

Disclosure and Investigation

Employees and officers who know or have reasonable cause to believe that wrongful conduct has occurred shall report such mismanagement, fraud or abuse to the Superintendent of Schools, the School Attorney or the Independent Auditor. Each of these Board-designated officers, upon receiving a report of alleged wrongful conduct, shall take immediate steps to conduct an investigation.

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

The Superintendent, School Attorney or the Independent Auditor shall maintain a written record of the allegation, conduct an investigation or cause an investigation to be conducted to ensure that the appropriate unit (auditors, police, SED, etc.) investigates 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

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confidential manner, as long as doing so does not interfere with conducting an investigation of the specific allegations or taking corrective action.

The district shall not take adverse employment action against an employee (1) who has notified the district of wrongdoing, allowing the district the opportunity to investigate and correct the misconduct, **or (2) who has reported misconduct when mandated to do so under federal or state law or regulation.**

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 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.

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This policy 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 Superintendent of Schools, 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.

Ref: Civil Service Law §75-b

Labor Law §740

8 NYCRR §§102.3, 102.4

Garrity v. University at Albany, 301 A.D. 2d 1015 (3rd Dept. 2003) (Article 75-b protections only apply if employee first discloses wrongdoing to employer, allowing for investigation and correction prior to disclosure to outside agencies)

Matter of Brey v. Bd. of Educ., 245 A.D. 2d 613 (3rd Dept. 1997) (termination based on work deficiency, not retaliation)

Adopted: 6/24/13

Revised/Adopted: 6/24/15