

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 ethical 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 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 are encouraged, to the extent they feel comfortable under the circumstances, to report such wrongful conduct to the Board or one of its designated officers. Alternatively, or in addition, District employees may report such known or believed wrongdoing to a governmental body.

For purposes of this policy, the term "wrongful conduct" shall be defined to include, but not to be limited to:

- theft of District money, property, or resources;
- misuse of authority for personal gain or other non-district purpose;
- fraud;
- conflicts of interest or abuse by another employee relating to his office or employment;
- 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 rule.

Investigation

Employees and officers who know or have reasonable cause to believe that wrongful conduct has occurred are encouraged, to the extent they feel comfortable under the circumstances, to report such conduct to the Superintendent of Schools, or his/her designee who shall notify the Board of Education. The Board of Education or the Superintendent of Schools or his/her designee, upon receiving a report of alleged wrongful conduct, may take immediate steps to authorize an investigation.

NOTE: The text below reflects the new state regulations which require direct reporting to SED,

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, must report their concerns to the State Education Department (SED) in the manner prescribed by the Commissioner of Education. In addition, staff members who suspect such violations of State testing procedures are encouraged, to the extent they feel comfortable under the circumstances, to report said concerns to the Superintendent or Board of Education. Any Building Principal receiving such a report shall relay this information to the Superintendent.

The Superintendent or his/her designee, shall maintain a written record of the allegation and results of an investigation. The Superintendent may also refer the matter to any appropriate entity or agency (e.g. SED, auditors, police, etc.) and notify the Board when appropriate to do so.

Except as otherwise provided in either State and/or federal law, the Board of Education, Superintendent and his/her designee 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.

NOTE: The first sentence below outlines the protections of Civil Service Law 75-b.

The District shall not take adverse employment action against an employee who has in good-faith, notified the District and/or governmental body of wrongdoing, including but not limited to instances where an employee reports misconduct as mandated by federal or State law or regulation (e.g., child abuse, State testing misconduct).

Complaints of Reprisal

An employee who alleges that he or she 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 Superintendent or his/her designee. The Superintendent or his/her designee will review the complaint expeditiously to make a preliminary determination as to:

- 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 Superintendent or his/her designee determines that all of the above elements are present, the Superintendent or his/her designee shall investigate the claim and make a recommendation to the Board. The Superintendent or his/her designee shall inform the complainant and the respondent, in writing, of:

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

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

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

The Superintendent of Schools may establish regulations necessary to implement this policy.

Ref: Civil Service Law § 75-b
Labor Law § 740
8 NYCRR §§ 102.3, 102.4 (testing misconduct)
Education Law § 3028-d
Matter of Brey v. Bd. of Educ., 245 A.D. 2d 613 (3rd Dept. 1997) (termination based on work deficiency, not retaliation)

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