

WHISTLEBLOWER POLICY OF ALBANY LAW SCHOOL
(Adopted May 14, 2009; amended February 25, 2022)

Policy

Albany Law School is responsible for the stewardship of the resources that enable it to achieve its mission and is committed to operating in an ethical and lawful manner. It has implemented internal controls and operational procedures to prevent and detect illegal or improper activities and will promptly investigate reports of such activities. The purposes of this Whistleblower Policy are: (i) to prevent "Covered Conduct" (as hereinafter defined); (ii) to detail Albany Law School's procedures for reporting and investigating Covered Conduct; and (iii) to detail the protections provided to those who report actual or suspected Covered Conduct.

Duty to Report

Each member of the Albany Law School community shares responsibility for stewardship of its resources and compliance with laws and policies. Accordingly, Trustees, officers, employees, independent contractors and volunteers ("Covered Individuals") are required to report conduct that is wasteful, abusive, illegal, fraudulent, or dishonest or otherwise may result in financial loss or other harm to Albany Law School or which is in violation of applicable laws, rules, regulations, ordinances, Executive Orders, judicial and administrative decisions, rulings and orders, ethical standards or Albany Law School policies (collectively, "Covered Conduct"), except as otherwise provided in New York State Labor Law Section 740, a copy of which is annexed hereto as Appendix "A".

Procedures for Filing Reports

All reports should be made in writing and should be as specific as possible, including information such as: the name of the individual or individuals involved, the nature of the Covered Conduct, details as to how this knowledge or information was obtained, any written proof, and names of others who are believed to be witnesses.

Covered Individuals should direct reports to their immediate supervisor. If the individual making the report feels it is inappropriate to report to an immediate supervisor, the individual should make the report to another person with supervisory authority, such as a department head, vice president, or dean.

Individuals may also make a report to the following:

- Reports about a staff member may be filed with the Director of Human Resources, U-226 or (518) 472-5852.
- Reports about a faculty member may be filed with the Associate Dean for Academic Affairs, M-202A or (518) 445-3235.
- Reports involving the President and Dean, a Vice President, Associate Dean, Assistant Dean, trustee, or volunteer may be made to the Chair of the Audit Committee of the Board of Trustees. Such report may be made directly or care of

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the Executive Assistant to the President and Dean. Any report received by the Executive Assistant to the President and Dean shall immediately be transmitted by the Executive Assistant to the Chair of the Audit Committee.

When deemed appropriate by management following an initial assessment, any report not so provided under this Policy may also be referred to the Chair of the Audit Committee (directly or care of the Executive Assistant to the President and Dean) for further action.

The person receiving a report under this Policy shall be referred to as the “Recipient.”

Retaliation Prohibited

Albany Law School prohibits retaliation against any individual, including any current or former employee or independent contractor, for making a good faith or reasonable report (whether pursuant to this Whistleblower Policy or otherwise in a manner which is protected under Section 740 of the New York State Labor Law) of actual or suspected Covered Conduct or cooperating with an Albany Law School or governmental investigation of such a report. Retaliation includes, but is not limited to, intimidation, harassment, discrimination and, in the case of employees, adverse employment consequences¹. Covered Persons are furthermore prohibited from directly or indirectly using their authority or influence to discourage individuals from engaging in such protected conduct.

Retaliation against any person is a violation of this Policy, and any Covered person who so retaliates is subject to disciplinary action, up to and including termination of employment. Individuals who believe they have suffered retaliation should immediately report it to one of the persons listed above.

Investigating the Alleged Illegal or Improper Activities

The report shall be reviewed by the Recipient with appropriate members of management and/or the Chair of the Audit Committee (the “Reviewing Authorities”) and legal counsel, as appropriate. Generally, the composition of the Reviewing Authorities shall be determined in light of the nature of the reported Covered Conduct and the Covered Person(s) involved. The Reviewing Authorities shall undertake or cause to be undertaken such investigation as they deem appropriate, taking into consideration all relevant facts and circumstances.

¹ New York law includes among prohibited retaliatory actions the following, without limitation: (i) adverse employment actions or threats to take such adverse employment actions against an employee in the terms of conditions of employment including but not limited to discharge, suspension, or demotion; (ii) actions or threats to take such actions that would adversely impact a former employee's current or future employment; or (iii) threatening to contact or contacting United States immigration authorities or otherwise reporting or threatening to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of an employee's family or household member, as defined in subdivision two of section four hundred fifty-nine-a of the social services law, to a federal, state, or local agency.

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The subject(s) of the report may be notified of the investigation, if the Reviewing Authorities deem it appropriate, unless prohibited by law.

Albany Law School may enlist outside legal, accounting, or other advisors, as appropriate, to investigate or otherwise act with respect to reports received under this policy. Albany Law School or its chosen investigator(s) shall prepare a written statement of the investigation or other action and its conclusions, as applicable.

Albany Law School cannot guarantee the anonymity of any individual making a report. Reports will be kept confidential to the extent reasonably possible, consistent with the need to investigate and applicable law.

The Executive Assistant to the President and Dean shall maintain confidential records of each report, the investigation of the report and any formal action taken as a result. These records will be retained for a period of 7 years.

Discipline Interfering with an Investigation

Albany Law School expects full cooperation in the investigation of reports received under this policy, and any person who interferes with such an investigation will be subject to discipline. Interference includes, but is not limited to, withholding, altering, or destroying information or documents, refusing to cooperate with investigators, or improperly attempting to influence the testimony or cooperation of witnesses. An employee's interference with, or failure to participate or otherwise cooperate in, an investigation may result in disciplinary action, up to and including termination of employment.

Resolution

When the investigation is concluded, the Reviewing Authorities will determine if any disciplinary action, up to and including termination of employment, and/or other corrective measures are required or otherwise warranted, which may include reporting the findings of the investigation to appropriate law or governmental authorities. Any person who is the subject of a report under this policy shall not be present at or participate in any deliberation, voting or other decision-making on any matter relating to such report, provided that nothing shall prohibit the Reviewing Authorities from requesting that such person present information as background or answer questions prior to such decision-making.

If, when the investigation is concluded, it is not established that Covered Conduct has occurred, the investigation will be closed. Any reports of Covered Conduct that are made in bad faith and without a reasonable basis may result in disciplinary action, up to and including termination of employment and/or other appropriate corrective measures.

If the identity of the person making the report is known, the Reviewing Authorities may inform him or her of the resolution, if the Reviewing Authorities determine that it is

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appropriate. If the Reviewing Authorities deem it appropriate and/or the circumstances so require, the subject(s) of the report may be notified of the resolution.

Distribution of Policy

This policy shall be distributed to all Trustees, officers, employees, independent contractors and volunteers who provide substantial services to Albany Law School upon commencement of services to Albany Law School electronically and/or through posting on the Albany Law School's website. Notification regarding rights provided under Section 740 of the New York State Labor Law shall be included with such posting, and shall also be posted conspicuously in easily accessible and well-lighted places customarily frequented by employees and applicants for employment at Albany Law School.

Administration of Policy

The Vice President for Finance and Business is responsible for administering this policy and for reporting on matters concerning this policy to the Audit Committee. For clarification or questions regarding this policy, please contact the Audit Committee Chair of the Board of Trustees, Vice President for Finance and Business, or the Director of Human Resources. No Trustee who is an employee of Albany Law School may participate in any Audit Committee or Board deliberations or voting relating to the administration of this Whistleblower Policy.

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APPENDIX A

NOTICE OF WHISTLEBLOWER PROTECTIONS

under

NEW YORK STATE LABOR LAW SECTION 740

All “employees” (as defined below) have certain rights under New York State Labor Law Section 740, the complete text of which is set forth below:

1. Definitions. For purposes of this section, unless the context specifically indicates otherwise:

(a) “Employee” means an individual who performs services for and under the control and direction of an employer for wages or other remuneration, including former employees, or natural persons employed as independent contractors to carry out work in furtherance of an employer’s business enterprise who are not themselves employers.

(b) “Employer” means any person, firm, partnership, institution, corporation, or association that employs one or more employees.

(c) “Law, rule or regulation” includes:

(i) any duly enacted federal, state or local statute or ordinance or executive order;

(ii) any rule or regulation promulgated pursuant to such statute or ordinance or executive order; or

(iii) any judicial or administrative decision, ruling or order.

(d) “Public body” includes the following:

(i) the United States Congress, any state legislature, or any elected local governmental body, or any member or employee thereof;

(ii) any federal, state, or local court, or any member or employee thereof, or any grand or petit jury;

(iii) any federal, state, or local regulatory, administrative, or public agency or authority, or instrumentality thereof;

(iv) any federal, state, or local law enforcement agency, prosecutorial office, or police or peace officer;

(v) any federal, state or local department of an executive branch of government; or

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(vi) any division, board, bureau, office, committee, or commission of any of the public bodies described in subparagraphs (i) through (v) of this paragraph.

(e) "Retaliatory action" means an adverse action taken by an employer or his or her agent to discharge, threaten, penalize, or in any other manner discriminate against any employee or former employee exercising his or her rights under this section, including

(i) adverse employment actions or threats to take such adverse employment actions against an employee in the terms of conditions of employment including but not limited to discharge, suspension, or demotion;

(ii) actions or threats to take such actions that would adversely impact a former employee's current or future employment; or

(iii) threatening to contact or contacting United States immigration authorities or otherwise reporting or threatening to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of an employee's family or household member, as defined in subdivision two of section four hundred fifty-nine-a of the social services law, to a federal, state, or local agency.

(f) "Supervisor" means any individual within an employer's organization who has the authority to direct and control the work performance of the affected employee; or who has managerial authority to take corrective action regarding the violation of the law, rule or regulation of which the employee complains.

2. Prohibitions. An employer shall not take any retaliatory action against an employee, whether or not within the scope of the employee's job duties, because such employee does any of the following:

(a) discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that the employee reasonably believes is in violation of law, rule or regulation or that the employee reasonably believes poses a substantial and specific danger to the public health or safety;

(b) provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such activity, policy or practice by such employer; or

(c) objects to, or refuses to participate in any such activity, policy or practice.

3. Application. The protection against retaliatory action provided by paragraph (a) of subdivision two of this section pertaining to disclosure to a public body shall not apply to an employee who makes such disclosure to a public body unless the employee has made a good faith effort to notify his or her employer by bringing the activity, policy or practice to the attention of a supervisor of the employer and has afforded such employer a

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reasonable opportunity to correct such activity, policy or practice. Such employer notification shall not be required where:

- (a) there is an imminent and serious danger to the public health or safety;
- (b) the employee reasonably believes that reporting to the supervisor would result in a destruction of evidence or other concealment of the activity, policy or practice;
- (c) such activity, policy or practice could reasonably be expected to lead to endangering the welfare of a minor;
- (d) the employee reasonably believes that reporting to the supervisor would result in physical harm to the employee or any other person; or
- (e) the employee reasonably believes that the supervisor is already aware of the activity, policy or practice and will not correct such activity, policy or practice.

4. Violation; remedy.

- (a) An employee who has been the subject of a retaliatory action in violation of this section may institute a civil action in a court of competent jurisdiction for relief as set forth in subdivision five of this section within two years after the alleged retaliatory action was taken.
- (b) Any action authorized by this section may be brought in the county in which the alleged retaliatory action occurred, in the county in which the complainant resides, or in the county in which the employer has its principal place of business. In any such action, the parties shall be entitled to a jury trial.
- (c) It shall be a defense to any action brought pursuant to this section that the retaliatory action was predicated upon grounds other than the employee's exercise of any rights protected by this section.

5. Relief. In any action brought pursuant to subdivision four of this section, the court may order relief as follows:

- (a) an injunction to restrain continued violation of this section;
- (b) the reinstatement of the employee to the same position held before the retaliatory action, or to an equivalent position, or front pay in lieu thereof;
- (c) the reinstatement of full fringe benefits and seniority rights;
- (d) the compensation for lost wages, benefits and other remuneration;
- (e) the payment by the employer of reasonable costs, disbursements, and attorney's fees;
- (f) a civil penalty of an amount not to exceed ten thousand dollars; and/or
- (g) the payment by the employer of punitive damages, if the violation was willful, malicious or wanton.

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6. Employer relief. A court, in its discretion, may also order that reasonable attorneys' fees and court costs and disbursements be awarded to an employer if the court determines that an action brought by an employee under this section was without basis in law or in fact.

7. Existing rights. Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any other law or regulation or under any collective bargaining agreement or employment contract.

8. Publication. Every employer shall inform employees of their protections, rights and obligations under this section, by posting a notice thereof. Such notices shall be posted conspicuously in easily accessible and well-lighted places customarily frequented by employees and applicants for employment.