

Revised Sample BOCES Policy

File: GBEB

NOTE: While Colorado BOCES are not required by law to adopt a policy on this subject, some content in this sample reflects legal requirements BOCES must follow. This sample contains the content/language that CASB believes best meets the intent of the law. However, the BOCES should consult with its own legal counsel to determine appropriate language that meets local circumstances and needs.

NOTE: The italicized language in brackets reflects the legal requirements that arguably apply to BOCES that operate a school or educational program for K-12 students and/or employ staff who work with students. If the BOCES operates a school or educational program for K-12 students and/or employs staff who work with students, keep the language in brackets. If the BOCES does not operate a school or educational program for students and/or does not employ staff who work with students, delete the language in brackets.

Staff Conduct (And Responsibilities)

All staff members have a responsibility to make themselves familiar with and abide by federal and state laws as these affect their work, and the policies and regulations of the BOCES.

As representatives of the BOCES [*and role models for students,*] all staff shall demonstrate and uphold high professional, ethical and moral standards. Staff members shall conduct themselves in a manner that is consistent with the mission of the BOCES [*and shall maintain professional boundaries with students at all times in accordance with this policy's accompanying regulation*]. Interactions between staff members must be based on mutual respect and any disputes will be resolved in a professional manner.

Rules of conduct

Each staff member shall observe the following rules of conduct established in state law. Accordingly, a BOCES employee shall not:

1. Disclose or use confidential information acquired in the course of employment to further substantially the employee's personal financial interests.
2. Accept a gift of substantial value or substantial economic benefit tantamount to a gift of substantial value which would tend to improperly influence a reasonable person in the position to depart from the faithful and impartial discharge of the staff member's duties, or which the staff member knows or should know is primarily for the purpose of a reward for action taken.
3. Engage in a substantial financial transaction for private business purposes with a person whom the staff member supervises.

4. Perform an action which directly and substantially confers an economic benefit tantamount to a gift of substantial value on a business or other undertaking in which the staff member has a substantial financial interest or is engaged as counsel, consultant, representative or agent.

All staff members shall be expected to carry out their assigned responsibilities with conscientious concern.

It shall not be considered a breach of conduct for a staff member to:

1. Use BOCES facilities and equipment to communicate or correspond with constituents, family members or business associates on an occasional basis.
2. Accept or receive a benefit as an indirect consequence of transacting BOCES business.

Essential to the success of ongoing BOCES operations *[and the instructional program]* are the following specific responsibilities which shall be required of all personnel:

1. Faithfulness and promptness in attendance at work.
2. Support and enforcement of policies of the Board and regulations of the BOCES administration.
3. Diligence in submitting required reports promptly at the times specified.
4. Care and protection of BOCES property.
- [5. Concern and attention toward the safety and welfare of students.]*

Child abuse

All BOCES employees who have reasonable cause to know or suspect that any child is subjected to abuse or to conditions that might result in abuse or neglect must immediately upon receiving such information report such fact in accordance with Board policy and state law.

The executive director is authorized to conduct an internal investigation or to take any other necessary steps if information is received from a county department of social services or a law enforcement agency that a suspected child abuse perpetrator is a BOCES employee. Such information shall remain confidential except that the executive director shall notify the Colorado Department of Education of the child abuse investigation.

Possession of deadly weapons

The Board's policy regarding public possession of deadly weapons on BOCES property or in BOCES buildings shall apply to BOCES employees. However, the restrictions shall not apply to employees who are required to carry or use deadly weapons in order to perform their necessary duties and functions.

[Felony/misdemeanor convictions

If, subsequent to beginning employment with the BOCES, the BOCES has good cause to believe that any staff member has been convicted of, pled nolo contendere to, or received a deferred or suspended sentence for any felony or misdemeanor other than a misdemeanor traffic offense or infraction, the BOCES shall make inquiries to the Department of Education for purposes of screening the employee.

In addition, the BOCES shall require the employee to submit a complete set of fingerprints taken by a qualified law enforcement agency or any third party approved by the Colorado Bureau of Investigation. Fingerprints must be submitted within 20 days after receipt of written notification. The fingerprints shall be forwarded to the Colorado Bureau of Investigation for the purpose of conducting a state and national fingerprint-based criminal history record check utilizing the records of the Colorado Bureau of Investigation and the Federal Bureau of Investigation.

Disciplinary action, which could include dismissal from employment, may be taken against personnel if the results of fingerprint processing provide relevant information. Non-licensed employees shall be terminated if the results of the fingerprint-based criminal history record check disclose a conviction for certain felonies, as provided in law.

Employees shall not be charged fees for processing fingerprints under these circumstances.]

[Unlawful behavior involving children

The BOCES may make an inquiry with the Department of Education concerning whether any current employee of the BOCES has been convicted of, pled nolo contendere to, or received a deferred or suspended sentence or deferred prosecution for a felony or misdemeanor crime involving unlawful sexual behavior or unlawful behavior involving children. Disciplinary action, including termination, may be taken if the inquiry discloses information relevant to the employee's fitness for employment.]

NOTE: The following paragraph is optional and requires employees to notify the BOCES when they are arrested for specific crimes, in accordance with this policy's accompanying regulation. CASB believes requiring employee notification of arrests reflects "best practices," as it assists the BOCES in becoming aware of potential criminal charges against the BOCES employee that may necessitate employee disciplinary action and parent notification. See, C.R.S. 22-1-130.

Notification concerning arrests

BOCES employees shall notify the BOCES when they are arrested for specific criminal offenses, in accordance with this policy's accompanying regulation.

The BOCES shall notify students' parents/guardians when BOCES employees are charged with specific criminal offenses, as required by state law and in accordance with applicable Board policy.

[Personnel addressing health care treatment for behavior issues

BOCES personnel are prohibited from recommending or requiring the use of psychotropic drugs for students. They are also prohibited from testing or requiring testing for a student's behavior without giving notice to the parent/guardian describing the recommended testing and how any test results will be used and obtaining prior written permission from the student or from the student's parent/guardian. See the Board's policy concerning survey, assessment, analysis or evaluation of students. BOCES personnel are encouraged to discuss concerns about a student's behavior with the student's parent/guardian and such discussions may include a suggestion that the parent/guardian speak with an appropriate health care professional regarding any behavior concerns.]

(Adoption date)

LEGAL REFS.: [28 C.F.R. 50.12 (b) (notification requirements regarding fingerprints)]
[C.R.S. 18-12-105.5 (unlawful carrying/possession of weapons on school grounds)]
[C.R.S. 18-12-214 (3)(b) (school security officers may carry concealed handgun pursuant to valid permit)]
[C.R.S. 19-3-308 (5.7) (child abuse reporting)]
C.R.S. 22-1-130 (parent notification of employee criminal charges)
[C.R.S. 22-32-109 (1)(ee) (school personnel prohibited from recommending certain drugs for students or ordering behavior tests without parent permission)]
[C.R.S. 22-32-109.1 (8) (inquiries upon good cause to department of education for purpose of ongoing screening of employees)]
[C.R.S. 22-32-109.7 (inquiries prior to hiring)]
[C.R.S. 22-32-109.8 (6) (termination of non-licensed employees for certain felony offenses)]
[C.R.S. 22-32-109.9 (licensed personnel – submittal of fingerprints)]
C.R.S. 22-32-110 (1)(k) (power to adopt conduct rules)
C.R.S. 24-18-104 (government employee rules of conduct)
C.R.S. 24-18-109 (local government employee rules of conduct)
C.R.S. 24-18-110 (voluntary disclosure)

CROSS REFS.: [JLC, Student Health Services and Records]
[JLDAC, Screening/Testing of Students]
[JLF, Reporting Child Abuse/Child Protection]
KDBA*, Parent Notification of Employee Criminal Charges
KFA, Public Conduct on BOCES Property

NOTE 1: The Board may also consider whether additional rules of conduct for off-campus behavior are appropriate. For example, the Board may require that employees charged with any crime involving violence or children report such charge to their supervisor within 24 hours so that BOCES personnel can determine whether it is appropriate for the employee to continue in his or her current position, especially if that position includes direct contact with students. Any such additions to this policy should be made only with the advice of the BOCES's legal counsel. There are legal concerns related to employees' rights that must be considered.

NOTE 1-2: State law defines "economic benefit tantamount to a gift of substantial value" to include: 1. A loan at a rate of interest substantially lower than the prevailing commercial rate; 2. Compensation received for private services rendered at a rate substantially exceeding the fair market value; and 3. Goods or services for the BOCES employee's personal benefit offered by a person who is at the same time providing goods or services to the BOCES under a contract or other means by which the person receives payment or other compensation from the BOCES. C.R.S. 24-18-104(2). However, state law permits a BOCES employee to receive such goods or services if the "totality of the circumstances" indicates the transaction is legitimate, the terms are fair to both parties, the transaction is supported by full and adequate consideration, and the employee does not receive any substantial benefit resulting from the employee's status that is unavailable to members of the public generally. C.R.S. 24-18-104(2)(b).

NOTE 2-3: State law lists the type of items that are not considered "gifts of substantial value or substantial economic benefit tantamount to a gift of substantial value" and are therefore permissible for a BOCES employee to receive. See, C.R.S. 24-18-104(3). Such items include campaign contributions or contributions in kind that are reported in accordance with the Fair Campaign Practices Act; an unsolicited item of trivial value (i.e. currently less than \$59), "such as a pen, calendar, plant, book, notepad or similar item;" and an unsolicited token or award of appreciation in the form of a plaque, trophy, desk item, wall memento or similar item. Id.; see also, Colo. Const. Art. XXIX, Section 3.

NOTE 3-4: The amount of the gift limit (\$59) is identical to the gift limit under section 3 of article XXIX of the state constitution. This amount shall be adjusted for inflation contemporaneously with any adjustment to the constitutional gift limit. C.R.S. 24-6-203(8). The state constitution requires an adjustment for inflation every four years. The next adjustment must occur in the first quarter of 2019. Colo. Const. Art. XXIX, Section 3 (6).

NOTE 4-5: Federal law requires BOCES to notify employees fingerprinted pursuant to this policy that the fingerprints will be used to check the criminal history records of the Federal Bureau of Investigation (FBI). BOCES must also notify fingerprinted employees about the opportunity to challenge the accuracy of the information contained in the FBI identification record and the procedure to obtain a change, correction or update of an FBI identification record. 28 C.F.R. 50.12 (b). BOCES must retain documentation that this notification was provided. ~~For sample notification and acknowledgement forms that meet these federal requirements, visit the Colorado Bureau of Investigation's website: <https://www.colorado.gov/pacific/cbi/identification-unit>.~~