

PUBLIC INTEREST DISCLOSURE – DUTY TO REPORT

Background

The Division is committed to the highest standard of ethical and accountable conduct, and recognizes the importance of working to deter and detect wrongdoing within the operations of the School Board and to promote public confidence in the administration of the Board. To ensure this, the Division is committed to maintaining a positive and supportive environment whereby employees can disclose potential wrongdoing, or seek advice about disclosing a potential wrongdoing, without retribution and are provided with clear guidance for how those disclosures may take place.

This procedure applies to all employees of Elk Island Catholic Schools.

Definitions

PIDA – the *Public Interest Disclosure (Whistleblower Protection) Act*

Designated Officer – the Assistant Superintendent has been designated by the Superintendent to manage and investigate disclosures under PIDA

Commissioner – the Public Interest Commissioner appointed under PIDA

Employee – an individual employed by the School Board

Disclosure – a disclosure of wrongdoing made in good faith by an employee under PIDA and this procedure

Wrongdoing – gross mismanagement, including an act or omission that is deliberate and that shows a reckless or willful disregard for the proper management of:

1. a) Public funds or a public asset,
- b) The delivery of a public service, including the management or performance of a contract or arrangement identified or described in the regulations, including the duties resulting for the contract or arrangement of any funds administered or provided under the contract or arrangement, and
- c) the duties and powers resulting from an enactment identified or described in the regulations or any funds administered or provided as a result of the enactment, employees, by a pattern of behaviour or conduct of a systemic nature that indicates a problem in the culture of the organization relating to bullying, harassment or intimidation.

- 2 A contravention of an Act, a regulation made pursuant to an Act, an Act of the Parliament of Canada or a regulation made pursuant to an Act of the Parliament of Canada;
- 3 An act or omission that creates a substantial and specific danger to the life, health or safety of individuals other than a danger that is inherent in the performance of the duties or functions of an employee, or
- 4 A substantial and specific danger to the environment;
- 5 A wrongdoing prescribed in the regulations;
- 6 Knowingly directing or counseling an individual to commit a wrong doing mentioned in clauses a-c1

Reprisal – any adverse employment action taken against an employee who seeks advice on making a disclosure, makes a disclosure, or cooperates in an investigation of wrongdoing, or declines to participate in a wrongdoing in accordance with PIDA. Examples of reprisal include dismissal, layoff, suspension, demotion or transfer, discontinuation or elimination of a job, transfer, reduction in wages, change in hours of work or reprimand, any other measure that adversely affects the employer's employment or working conditions (i.e., bullying), and threats to do any of the above.

PROCEDURES

1. Receipt of Disclosures
 - a. Employees seeking advice on potential disclosure under PIDA and this policy shall be referred to the designated officer or from their direct supervisor, who shall provide the employee with information on PIDA, this procedure, the requirements of PIDA and this procedure and other alternative processes for resolution of the employee's concern. Employees may also seek advice about making a disclosure from the Superintendent or the Commissioner. The office of the Public Interest Commissioner can be contacted Monday to Friday 08:15-12:00 / 13:00-16:30 at Toll-free province-wide: 1-855-641-8659 or via email at info@pic.alberta.ca.
 - b. Should an employee reasonably believe a wrongdoing has been committed, is about to be committed, or they have been asked to commit a wrongdoing, that individual may make a disclosure for the purposes of PIDA and this procedure to the designated officer (utilizing the PIDA Disclosure Form – Exhibit 4.27.1) or directly to the Public Interest Commissioner (utilizing the Complaint of Wrongdoing form located at yourvoiceprotected.ca)

- c. Disclosure shall provide:
 - (i) The name of the disclosing employee
 - (ii) A description of the wrongdoing
 - (iii) The name of the individual of individuals alleged
 - To have committed the wrongdoing or
 - To be about to commit the wrongdoing
 - (iv) The date of the wrongdoing
 - (v) Any additional information the designated officer or Commissioner may reasonably require in order to investigate the matters set out in the disclosure.
- d. The designated officer shall acknowledge receipt of the disclosure to the employee making the disclosure within 5 business days from receipt of the disclosure.

2. Preliminary Handling of Disclosures

- a. Where the designated officer is of the opinion that the subject matter of a disclosure would be more appropriately dealt with by a department of the Government of Alberta, an office of the Legislature, or another public entity, the designated officer shall report the subject matter of the disclosure to the designated officer of that other entity.
- b. Where an alternative process exists for the handling of the subject matter of the disclosure under:
 - (i) Another policy/procedure of the Board (Administrative Procedure 170 - Harassment)
 - (ii) Another *Act* or regulation (for example, human rights or occupational health and safety legislation) or
 - (iii) Procedures under a Collective Agreement or employment contract

And the designated officer is of the opinion that the subject matter of the disclosure would be more appropriately dealt with under that alternative process, the designated officer may refer the disclosing employee to those procedures.

- c. Where the disclosure:
 - (i) Is clearly frivolous or vexatious has not been in good faith, has not been made in a timely enough manner to permit an investigation or does not deal with a wrongdoing

- (ii) Relates to a decision, action or matter that results from a balanced and informed decision-making process on a public policy or operational issue, or
- (iii) Does not provide adequate particulars about the wrongdoing to permit the conduct of a fair and effective investigation

The designated officer may decline to investigate the disclosure.

- d. If more than one disclosure is made of a single wrongdoing, the designated officer may conduct a single investigation into the wrongdoing.
- e. The designated officer shall advise the employee making the disclosure whether the disclosure will or will not be investigated within twenty (20) business days from receipt of the disclosure.

3. Mandatory Disclosures to Others

- a. If the designated officer reasonably believes that the matter to which the disclosure relates constitutes an imminent risk of a substantial or specific danger to the life, health or safety of individuals, or to the environment, the designated officer shall as soon as reasonably practicable refer the disclosure to the Commissioner.
- b. Notwithstanding whether a disclosure is referred to the Commissioner, where the designated officer is aware of:
 - (i) A disclosure relating to an imminent risk of a substantial or specific danger to the life, health or safety of individuals, or to the environment, or
 - (ii) That the alleged wrongdoing, if true, may threaten the welfare of students, staff, or the safe and caring environment of the school,
 - The designated officer shall also ensure that appropriate persons within the School Board have sufficient information to act to abate that risk.
- c. Where, at any point following a disclosure, the designated officer has reason to believe that the alleged wrongdoing, if true, could potentially give rise to the Superintendent being of the opinion that the welfare of students is threatened by the presence of the teacher, the designated officer shall advise the Superintendent of the alleged wrongdoing for consideration of a possible administrative suspension under section 105(2) of the *School Act*.
- d. Where in the course of an investigation the designated officer has reason to believe that an offence has been committed under an *Act* or regulation of the Province of Alberta, or under an *Act* or regulation of the Parliament of Canada, the designated officer shall report the potential offence to the appropriate law enforcement authorities.

- e. The designated officer must report matters of imminent risk to the life, health or safety of individuals or the environment, to:
 - i) An appropriate law enforcement agency
 - ii) in the case of a health-related matter, to the Chief Medical Officer of Health
 - iii) to the department, public entity, or office responsible for managing, controlling or containing the risk, in and; and
 - iv) to a person identified in the procedures outlined

4. Investigations

- a. The designated officer shall conduct all investigations in accordance with the principles of natural justice and procedural fairness.
- b. The designated officer may utilize internal personnel and resources, and may retain outside personnel or resources, for the purpose of conducting the investigation.
- c. The designated officer, and any person conducting an investigation on their behalf, may interview any person and shall have access to any documents of the School Board necessary for the investigation.
- d. Where, in the course of an investigation, the designated officer has reason to believe that another wrongdoing has been committed or may be committed the designated officer shall investigate that other potential wrongdoing as if a disclosure had been made.

5. Report

- a. The designated officer shall provide a written investigation report to the Superintendent detailing, whether the disclosure was substantiated and providing recommendations on corrective action.
- b. The investigation shall be completed and the written investigation report provided to the Superintendent no later than 120 business days from the date the disclosure was received.
- c. Where the designated officer is considering a recommendation to the Superintendent that the Superintendent exercise authority delegated to them by the Board of Trustees to suspend or terminate a teacher or administrative designation under the *School Act*, the designated officer shall consult with other board staff typically responsible for such recommendations concerning the necessary process. In such event, the written investigation report shall be provided to the Superintendent in the course of any process under the *School Act* for the Superintendent to consider that recommendation.

- d. The Superintendent shall consider the recommendations in the investigation report, and shall be responsible for determining what action, if any, including disciplinary action, shall be either taken as a result.

The Superintendent shall follow-up with the employees responsible to ensure those actions are taken.

- e. The person making the complaint shall be advised when the investigation is completed, the recommendations made in the written investigation report, and the Superintendent's actions resulting from the written investigation report.

6. Extensions of Timelines

- a. The designated officer may request of the Superintendent, and the Superintendent may grant, extensions of timelines within this procedure, provided that the total extensions granted do not extend the overall time period for investigation and provision of the investigation report by more than 30 business days.
- b. The Superintendent may request permission from the Commissioner to extend timelines for a longer period.
- c. In the event of an extension of a timeline, the designated officer shall promptly advise the person who submitted a disclosure of wrongdoing when he or she may expect the next procedural step to occur or be completed.

7. Conflicts of Interest/Disclosures About the Superintendent

- a. In the event the designated officer is in a conflict of interest with respect to the nature of the disclosure or any person involved in the disclosure or alleged wrongdoing, the designated officer shall request the Superintendent to designate an alternative designated officer for the disclosure. The alternative designated officer shall have all the powers of the designated officer for the purpose of the disclosure.
- b. In the event of a disclosure to the designated officer concerning the conduct of the Superintendent, or concerning which the Superintendent has a conflict of interest, the designated officer shall:
 - (i) Advise the Board Chair of the nature of the disclosure, whereupon the Board of Trustees may authorize an investigation into the disclosure;
 - (ii) Advise the Commissioner of the disclosure and its referral to the Board of Trustees, and seek advice from the Commissioner concerning whether the disclosure should be referred to the Commissioner.

8. Confidentiality

- a. The designated officer shall ensure all disclosures, and information gathered in the course of investigating disclosures, including the identity of the person making the disclosure, those alleged to have committed the wrongdoing and witnesses, are maintained in confidence and disclosed only:
 - (i) As necessary for this procedure and to conduct the investigation in accordance with the principles of a procedural fairness and natural justice
 - (ii) In accordance with PIDA or any other statute
 - (iii) The disclosure of that information is necessary due to an imminent risk of a substantial and specific danger to the life, health or safety of individuals, or to the environment.

9. No Reprisal

- a. No person may take or direct any reprisal against an employee for making a disclosure, seeking advice about making a disclosure, declining to participate in a wrongdoing, or taking any other steps under PIDA, so long as the employee is acting in good faith.
- b. The Public Interest Commissioner has exclusive jurisdiction to receive and investigate complaints of reprisal. Employees who believe they have been subject of a reprisal are to submit a "Complaint of Reprisal" directly to the Commissioner. The Complaint of Reprisal must be submitted in the prescribed form and is available on the Public Interest Commissioner's website at www.yourvoiceprotected.ca. Employees may contact the office of the Public Interest Commissioner for advice at toll-free province-wide: 1-855-641-8659 or via email at info@pic.alberta.ca
- c. If following an investigation, the Commissioner finds that a reprisal occurred the Commissioner is obligated to refer the decision to the Labour Relations Board for determination as to the appropriate remedy. In addition to being subject to prosecution, financial restitution may be required if the reprisal action against an employee occurred.

10. The Superintendent must ensure that information about PIDA and the internal procedures of the Board are widely communicated to the employees of the Board.

References: Section 18, 20, 60, 61, 96, 113, 117 School Act
Public Interest Disclosure (Whistleblower Protection) Act
Teaching Profession Act
Public Interest Disclosure (Whistleblower Protection) Regulation
ATA Code of Professional Conduct