

PUBLIC INTEREST DISCLOSURE (WHISTLEBLOWER PROTECTION)

Background

Battle River School 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 division, and to promote public confidence in the administration of the board.

To ensure this, the school board 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. All employees have a duty to report all wrongdoings or suspected wrongdoings to the Chief Officer or Designate.

An employee of the school board may make a disclosure of a wrongdoing, which the school board will investigate in accordance with these procedures. No person may make reprisals against an employee for making a disclosure, seeking advice about making a disclosure, or taking any other steps under PIDA, so long as the employee is acting in good faith.

Purpose

The Province of Alberta has enacted the Public Interest Disclosure Act (PIDA) in order to:

- facilitate the disclosure and investigation of significant and serious matters in public entities, including school boards, that an employee believes may be unlawful, dangerous to the public or injurious to the public interest,
- protect employees who make those disclosures,
- manage, investigate and make recommendations respecting disclosures of wrongdoings and reprisals, and
- promote public confidence in the administration of public entities.

The school board is required under section 5(1) of PIDA to establish and maintain, in accordance with PIDA, written procedures for managing and investigating disclosures by employees of the school board. Those written procedures are set out herein.

Definitions

- “PIDA” means the Public Interest Disclosure (Whistleblower Protection) Act;
- “Chief Officer” means the Superintendent of schools;
- “Designated Officer” means person designated to manage and investigate disclosure under PIDA;
- “Commissioner” means the Public Interest Commissioner appointed under PIDA;
- “employee” means an individual employed by the school board;
- “disclosure” means a disclosure of wrongdoing made in good faith by an employee under PIDA and this procedure;
- “wrongdoing” means:

- 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,
 - an act or omission that creates: (i) 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 (ii) a substantial and specific danger to the environment,
 - gross mismanagement of public funds or a public asset, and
 - knowingly directing or counselling an individual to commit a wrongdoing mentioned above.
- “reprisal” means any adverse employment action taken against an employee who seeks advice on making a disclosure, makes a disclosure, or co-operates 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 employee’s employment or working conditions (e.g., bullying), and threats to do any of the above.

Procedures

1. Designation of Chief Officer and Designated Officer

- 1.1 The Superintendent is designated the Chief Officer for the purpose of the overall administration and reporting required under the PIDA.
- 1.2 The Director of Human Resources is designated as the Designated Officer for the purpose of administration and investigating disclosure under PIDA.

2. Process for Managing and Investigating Disclosures

- 2.1 Employees seeking advice on potential disclosure under PIDA and this procedure shall be referred to the Designated Officer, 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.
- 2.2 Employees may contact the Office of the Public Interest Commissioner to seek advice about making a disclosure or may also contact the Office of the Public Interest Commissioner to advise they have made a disclosure to their Designated Officer.
- 2.3 Employees shall make disclosures for the purposes of PIDA and this procedure to the Designated Officer, utilizing the “Public Interest Disclosure” form. Disclosures shall provide:
 - (a) the name of the disclosing employee;
 - (b) a description of the wrongdoing;
 - (c) the name of the individual or individuals alleged to have committed the wrongdoing or about to commit the wrongdoing;
 - (d) the date of the wrongdoing.
- 2.4 The Designated Officer shall acknowledge receipt of the disclosure to the employee making the disclosure within 5 business days from receipt of the disclosure.

3. Preliminary Handling of Disclosures

3.1 Where the Designated Officer is of the opinion that the subject matter of a disclosure would be more appropriately be 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.

3.2 Where an alternative process exists for handling the disclosure subject matter under:

- (a) another procedure; for example:
 - AP 170 - Harassment-Free Work Environment
 - AP 409 - Employee Supervision Where Performance May Be Unsatisfactory
 - AP 412 - Teacher Supervision and Evaluation
 - AP 422 - Administrative Evaluation Procedures
- (b) another Act or regulation (examples include human rights or occupational health and safety legislation);
- (c) the 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 be dealt with under that alternative process, the Designated Officer may refer the disclosing employee to those procedures.

3.3 Where the disclosure:

- (a) is clearly frivolous, has not been made in good faith, has not been made in a timely enough manner to permit an investigation, or does not deal with a wrongdoing,
- (b) 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
- (c) 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.

3.4 If more than one disclosure is made of a single wrongdoing, the Designated Officer may conduct a single investigation.

3.5 The Designated Officer shall advise the employee making the disclosure whether the disclosure will or will not be investigated within 10 business days from receipt of the disclosure.

4. Disclosures to Others

4.1 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.

4.2 If the disclosure is believed to be a matter of imminent risk of a substantial or specific nature to the life, health or safety of individuals or to the environment, such that there is insufficient time to report to the Designated Officer, the report should be made directly to the Commissioner. However in these circumstances the employee must as

soon as is reasonable practicable make a disclosure of this matter to their Designated Officer.

- 4.3 If the disclosure involves the Chief Officer or Designated Officer, the report can be made directly to the Commissioner.
- 4.4 If the disclosure has been made and not resolved within the specified time periods or according to procedures, a report may be made directly to the Commissioner.
- 4.5 If the employee is not satisfied with the resolution of a completed investigation, a report can be made directly to the Commissioner.
- 4.6 Notwithstanding whether a disclosure is referred to the Commissioner, where the Designated Officer is aware of:
 - (a) 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
 - (b) 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.

- 4.7 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.
- 4.8 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 non-teaching staff member, the Designated Officer shall advise the Superintendent of the alleged wrongdoing for consideration of a possible administrative suspension.
- 4.9 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.
- 4.10 If the employee is unable to complete the disclosure procedure because a reprisal has been directed against the employee, the report can be made directly to the Commissioner.
- 4.11 If the employee reasonable believes that a reprisal is likely to be directed against the employee if the disclosure is made, the report can be made directly to the Commissioner.

5. Investigations

- 5.1 The Designated Officer shall conduct all investigations in accordance with the principles of natural justice and procedural fairness.
- 5.2 The Designated Officer may utilize internal personnel and resources, and may retain outside personnel or resources, for the purpose of conducting the investigation.
- 5.3 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.
- 5.4 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.

6. Report

- 6.1 The Designated Officer shall provide a written investigation report to the Chief Officer detailing whether the disclosure was substantiated, and providing recommendations on corrective action.
- 6.2 The investigation shall be completed and the written investigation report provided to the Chief Officer no later than 110 business days from the date the disclosure was received.
- 6.3 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 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.
- 6.4 The Chief Officer 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 or recommended to the Board of Trustees. The Chief Officer shall follow-up with the employees responsible to ensure those actions are taken.
- 6.5 The person making the complaint shall be advised when the investigation is completed, the recommendations made in the written investigation report, and the Chief Officer's actions resulting from the written investigation report.

7. Timeline Extensions

- 7.1 The Designated Officer may request of the Chief Officer, and the Chief Officer may grant, extensions of timelines within this policy, 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.
- 7.2 The Chief Officer may request permission from the Commissioner to extend timelines for a longer period.

7.3 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.

8. Conflicts of Interest / Disclosures About the Chief Officer

8.1 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 Chief Officer 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.

8.2 In the event of a disclosure to the Designated Officer concerning the conduct of the Chief Officer, or concerning which the Chief Officer has a conflict of interest, the Designated Officer shall:

- (a) advise the Board Chair of the nature of the disclosure, whereupon the Board of Trustees may authorize an investigation into the disclosure;
- (b) 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.

9. Confidentiality

9.1 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:

- (a) as necessary for this procedure and to conduct the investigation in accordance with the principles of procedural fairness and natural justice;
- (b) in accordance with PIDA or any other statute;
- (c) 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.

10. No Reprisals

10.1 No person shall take or direct, or counsel or direct a person to take or direct, any of the following measures against an employee because the employee has, in good faith, sought advice about making a disclosure, made a disclosure, cooperated in an investigation under this Act, declined to participate in a wrongdoing or done anything in accordance with this Act:

- (a) a dismissal, layoff, suspension, demotion or transfer, discontinuation or elimination of a job, change of job location, reduction in wages, change in hours of work or reprimand;
- (b) any measure, other than one mentioned in clause (a), that adversely affects the employee's employment or working conditions;
- (c) a threat to take any of the measures mentioned in clause (a) or (b).

11. Other Obligations

11.1 Communication: The Chief Officer must ensure that information about this Act and the procedures established are widely communicated to the employees of the department, public entity or office of the Legislature for which the Chief Officer is responsible.

11.2 Annual Report: The Chief Officer must prepare a report annually on all disclosures that have been made to the Designated Officer of the department, public entity or office of the Legislature for which the Chief Officer is responsible.

The above report must include the following information:

- a) number of disclosures received;
- b) number of disclosures acted on;
- c) number of disclosures not acted on;
- d) number of investigations; and
- e) recommendations made.

This report is to be included in the Annual Education Results Report.

Reference: Public Interest Disclosure (Whistleblower Protection) Act and Regulation
School Act
Service Alberta's "Best Practices for Key Elements of a Whistleblower Policy"
Service Alberta's "Legislated Requirements Checklist" concerning PIDA

Forms: 120-1 Public Interest Disclosure Form