

ADMINISTRATIVE PROCEDURE NO. 458 PUBLIC INTEREST DISCLOSURE/DUTY TO REPORT

Background

Red Deer Catholic Regional Division #39 is committed to providing quality education in a Catholic environment. The Division has a duty to conduct its operations in a transparent manner and to ensure all practices are consistent with legal statutes and requirements as established by Alberta Education and as guided by the Alberta Catholic Bishops. The Superintendent and senior leadership team are responsible for maintaining a system of management controls which detect and deter misconduct.

The province of Alberta has enacted the Public Interest Disclosure (Whistleblower Protection Act) (PIDA) for the purpose of:

- facilitating the disclosure and investigation of significant and serious matters In or relating to public entities, including school boards, that an employee believes may be unlawful, dangerous to the public or injurious to the public interest;
- protecting employees who make those disclosures;
- managing, investigating, and making recommendations respecting disclosures of wrongdoings and reprisals; and
- promoting public confidence in the administration of public entities.

Every staff member has the responsibility to use available resources to focus on our mission through clarity of purpose and to work in the best interest of the Division. To this end, all staff members shall conduct themselves personally and professionally in a Catholic moral and highly ethical manner so as to not bring the Division or other staff members into public disrepute or ridicule. This Administrative Procedure is intended to assist individuals who believe they have discovered serious wrongdoings provided they make disclosure in accordance with the administrative procedure and applicable codes of ethics. Employees must be able to confidentially express their reasonable concerns about unlawful or dishonest acts or misuse of Division property. Every employee must have the means to report such conduct to the appropriate person.

Responsibilities:

Chief Officer – The Superintendent of the Board is designated as the “Chief Officer” for the purpose of the overall administration and reporting required under PIDA.

Designated Officer – The Secretary-Treasurer is designated as the “Designated Officer” to manage and investigate disclosures under PIDA.

Procedures

Disclosure of Wrongdoing – A wrongdoing is defined as one of the following, within or relating to the Board or its employees;

- a) 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;
- b) 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
- c) A substantial and specific danger to the environment;
- d) Gross mismanagement, including an act or omission that is deliberate and that shows a reckless or wilful disregard for the proper management of
 - Public funds or a public asset,
 - The delivery of a public service, including the management or performance of
 - i. A contract or arrangement identified or described in the regulations, including the duties resulting from the contract or arrangement or any funds administered or provided under the contract or arrangement, and
 - ii. 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, or
 - 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;
- e) A wrongdoing prescribed in the regulations;
- f) Knowingly directing or counselling an individual to commit a wrongdoing mentioned in the above clauses.

Any staff member who believes another member of the Division has committed a wrongdoing as provided in the Act, has a duty to report that wrongdoing. The wrongdoing should initially be reported to their direct supervisor unless the direct supervisor has involvement in the wrongdoing in which case the staff member should report directly to the Secretary-Treasurer. If the direct supervisor has not dealt with the issue to the satisfaction of the staff member he/she may report the wrongdoing to the Secretary-Treasurer. The staff member must file a copy of Appendix A to the Secretary-Treasurer to begin the process.

Employees are protected from reprisals when they have in good faith, sought advice about making a disclosure, co-operated in an investigation under this Act, declined to participate in a wrongdoing or done anything in accordance with this Act.

Disclosures of Wrongdoings

1. Employees seeking advice on potential disclosure under PIDA and this AP shall be referred to the Designated Officer, who shall provide the employee with information on PIDA, this AP, the requirements of PIDA and this AP, and other alternative processes for resolution of the employee's concern.
2. An employee who reasonably believes that he or she has information that could show that a wrongdoing has been or is about to be committed, or who has been asked to commit a wrongdoing, may make a disclosure to the Designated Office, the Public Interest Commissioner, or both.
3. At the time an employee makes a disclosure to the Designated Officer, the employee may also make the disclosure to the Commissioner and advise the Commissioner that the disclosure has been made to the employees' Designated Officer. Further information can be obtained by visiting the Commissioners website at www.yourvoiceprotected.ca or may contact the office of the Public Interest Commissioner Monday to Friday between the hours of 8:15 – 16:30 at 1-855-641-8659.
4. Disclosures must be in writing and include:
 - (a) A description of the wrongdoing;
 - (b) The name of the individual or individuals alleged to have committed the wrongdoing, or to be about to commit the wrongdoing;
 - (c) The date of the wrongdoing;
 - (d) Whether a disclosure in respect of a wrongdoing has been made under Section 5 and whether a response has been received, and if so, a copy of the response;
 - (e) Any additional information the Designated Officer or Commissioner may reasonably require in order to investigate the matters set out in the disclosure.
5. In the event that disclosure to the Designated Officer is not appropriate due to conflict of interest with respect to the nature of the disclosure or the person involved the Designated Officer shall refer the matter to the Chief Officer.
6. 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;
 - Advise the Board Chair of the nature of the disclosure, whereupon the Board may authorize an investigation into the disclosure;
 - Advise the Commissioner of the disclosure and its referral to the Board and seek advice from the Commissioner concerning whether the disclosure should be referred to the Commissioner.
7. If the Designated Officer reasonably believe 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 Chief Officer and the Commissioner.

- a) During an investigation, if the chief officer or the designated officer has reason to believe that an offence has been committed under an Act or regulation or under an Act or regulation of the Parliament of Canada, that person must, as soon as reasonably practicable, report the alleged offence to a law enforcement agency and to the Minister of Justice and Solicitor General.
 - b) With respect to a disclosure made under the procedures described in section 5(2)(c) of PIDA or a disclosure with respect to a matter that the chief officer or the designated officer reasonably believes could constitute an imminent risk of a substantial and specific danger to the life, health or safety of individuals, or to the environment, that person must disclose the matter to the Commissioner and
 - i. to an appropriate law enforcement agency,
 - ii. in the case of a health-related matter, to the Chief Medical Officer of Health appointed under section 13 of the Public Health Act,
 - iii. to the department, public entity, office or prescribed service provider responsible for managing, controlling or containing the risk, if any, and
 - iv. to a person identified in the procedures described in section 5(2)(c) or a person prescribed in the regulations for the purposes of this clause.
 - c) The chief officer or the designated officer,
 - i. must suspend the investigation of a disclosure or complaint of a reprisal reported under subsection (1) or disclosed under subsection (2)(a),
 - ii. may suspend the investigation of any other disclosure or complaint referred to in this section, and
 - iii. may resume a suspended investigation only after any charge relating to an alleged offence, or any investigation by a law enforcement agency or the Minister of Justice and Solicitor General, has been finally disposed of.”
8. Notwithstanding whether a disclosure is referred to the Commissioner, where the Designated Officer is aware of:
- 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
 - 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 Board have sufficient information to abate that risk.
9. 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

213(2) of the *Education Act*.

10. Where in the course of an investigation, the Designated Officer has reason to believe that an offense 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, Firstly, advise the Chief Officer and then shall report the potential offense to the appropriate law enforcement authorities.
11. If a chief officer, a designated officer or, during an investigation, the Commissioner has reason to believe that an offence has been committed under an Act or regulation or under an Act or regulation of the Parliament of Canada, that person must, as soon as reasonably practicable, report the alleged offence to a law enforcement agency and to the Minister of Justice and Solicitor General.
12. If more than one disclosure of wrongdoing is received by the Designated Officer in respect to the same matter, a single investigation may be conducted on the wrongdoing.
13. 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.
14. Anonymous disclosures will be dealt with in accordance with the provisions of this procedure.
15. In the event that an employee feels it is more appropriate to make a disclosure of wrongdoing directly to the Public Interest Commissioner he/she may do so using the online web-form available at www.yourvoiceprotected.ca.

Investigations

1. The designated officer may request advice from the Commissioner with respect to the management and investigation of a disclosure.
2. Upon receiving a disclosure, the Designated Officer shall make a decision whether to investigate.
3. The Designated Officer shall determine whether the allegations fall under the jurisdiction of PIDA, and make a decision whether to investigate.
4. For non-jurisdictional matters, a complainant may be advised that they could be examined or followed up under a different policy/procedure. The complainant should be made aware whether the alternate mechanism guarantees confidentiality and protection from reprisal.

5. The Designated Officer may utilize both internal personnel and external resources, for the purpose of conducting the investigation.
6. The Designated Officer, and any person conducting an investigation on their behalf, may interview any person and shall have access to any document of the Board necessary for the investigation.
7. 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:
 - as necessary for this procedure and to conduct the investigation in accordance with the principles and procedural fairness and natural justice;
 - in accordance with PIDA or any other statute;
 - if 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.
8. Investigations shall be conducted in accordance with the principles of procedural fairness and natural justice.
9. The Designated Officer may decline to investigate where the disclosure:
 - is clearly frivolous or vexatious, 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;
 - relates to a decision, action or matter that results from a balanced and informed decision-making process on a public procedure or operational issue; or
 - does not provide adequate particulars about the wrongdoing to permit the conduct of a fair and effective investigation.
10. The Designated Officer is not required to investigate a disclosure or, if an investigation has been initiated, may discontinue the investigation if more than 2 years has passed since the date that the wrongdoing was Discovered.

Complaint of Reprisals

A reprisal is any adverse employment action including:

- dismissal, layoff, suspension, demotion, transfer, discontinuation or elimination of a job;
- change of job location, reduction in wages, changes in hours of work, reprimand;
- or any other measure that adversely affects the employee's employment or working conditions, including threats to do any of the above.

An employee who in good faith makes a disclosure under this administrative procedure will not be subject to any threats of dismissal, layoff, suspension, demotion, transfer, discontinuation or elimination of a job, change of job location, reduction in wages, change in hours of work or reprimand or any other measures that adversely affects the employee's employment or working

conditions. The Public Interest Commissioner has exclusive jurisdiction to receive and investigate complaints of reprisal. If an employee believes they have been subjected to a reprisal for something they did in accordance with the Act, they are to submit a “Complaint of Reprisal” form directly to the Commissioner. The Complaint of Reprisal must be submitted on the prescribed form that is available on the Public Interest Commissioner’s website at <https://yourvoiceprotected.ca/for-employees/reprisal-form/>. 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

Timelines

1. The Designated Officer shall acknowledge receipt of the disclosure or complaint of reprisal to the employee making the disclosure or complaint within five (5) business days from receipt of the disclosure or complaint. An employee who submitted a disclosure of wrongdoing or complaint of reprisal shall be advised, no more than 10 business days from the date on which the disclosure of wrongdoing or complaint of reprisal is received, whether an investigation will be undertaken.
2. The investigation must be concluded and the investigation report provided to the Chief Officer not more than 120 business days from the date on which the disclosure of wrongdoing or complaint of reprisal was received.
3. These timelines may be extended by the Chief Officer provided that the total extensions granted do not exceed the overall time period for investigation and provision of the investigation report by more than 30 business days, or for a longer period of time if permitted by the Commissioner.

Reporting

1. The Designated Officer shall provide a written investigation report to the Chief Officer detailing whether the disclosure was substantiated, and provide recommendations on corrective action.
2. Where the Designated Officer is considering a recommendation to the Superintendent that the Superintendent exercise authority delegated to him or her by the Board to suspend or terminate a teacher or administrative designation under the *Education Act*, the Designated Officer shall consult with other Board staff typically responsible for such recommendations concerning the necessary process. In such an event, the written investigation report shall be provided to the Superintendent in the course of any process under the *Education Act* for the Superintendent to consider that recommendation.
3. 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 taken. The Chief Officer shall follow up with the employees responsible to ensure those actions are taken.

4. 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.

Good Faith

1. An employee who submits a disclosure of wrongdoing or complaint of reprisal must act in good faith. Good faith describes that state of mind denoting honesty of purpose, being faithful to one's obligation, or an honest intention to abstain from taking any advantage of another.
2. An employee who knowingly makes deliberately false and/or malicious allegations of wrongdoing may be subject to disciplinary action up to and including termination of employment.

Annual Reporting

The Chief Officer will prepare an annual report on all disclosures that have been made to the Designated Officer. This report will be posted annually on the Division website by January 30th of each year. The annual report will include the following information:

- the number of disclosures received by or referred to the Designated Officer;
- the number of disclosures acted on; and
- the number of disclosures not acted on by the Designated Officer;
- the number of disclosures investigations by the Designated Officer as a result of disclosures;
- in the case of an investigation that results in a finding of wrongdoing, a description of the wrongdoing and any recommendations made or corrective measures taken in relation to the wrongdoing or the reasons why no corrective measure was taken;
- The Chief Officer is restricted from publicly identifying in the annual report any employee who sought advice, made a disclosure, or made a complaint of reprisal. This restriction includes disclosing health information that could identify an individual.

Access to Information

The Freedom of Information and Protection of Privacy Act (FOIPP) has been amended and now places restrictions on the right of access to a record that would reveal the identity of a person who has requested advice about making a disclosure, made a disclosure, or submitted a complaint of reprisal or whose complaints have been referred to the Labour Relations Board, unless that information can reasonably be severed from a record.

Procedure Communication

The Chief Officer will ensure that this procedure is reviewed with all employees and made accessible to them prior to the start of each school year.

Reference:

Section 53,53,196,197,213,222,225 of the Education Act
Public Interest Disclosure (Whistleblower Protection) Act
Teaching Professions Act
ATA Code of Professional Conduct

March 2009, Revised: June 2014, August 2018, November 2019
Reviewed: September, 2017