Administrative Procedure 419

PUBLIC INTEREST DISCLOSURE

Belief

The Division is committed to ensuring the highest standard of ethical and accountable conduct and recognizes the importance of working to deter and detect wrongdoing within the operations of the Division and to promote public confidence in the administration of the Division.

Guidelines

1. The Division is committed to maintaining a positive and supportive environment whereby employees can disclose potential wrongdoing, or seek advice about disclosing potential wrongdoing, without retribution, and are provided clear guidance for how these disclosures may take place.

2. Employees have a duty to report all wrongdoings or suspected wrongdoings to the Designate Officer (as defined below), or to the Public Interest Commissioner (the “Commissioner”).

3. Under the Public Interest Disclosure Act (PIDA), no person may make reprisals against an employee for making a disclosure, seeking advice about making a disclosure, or taking any steps under PIDA, so long as the employee is acting in good faith.

4. The Division 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 Division.

Procedures

5. Designation of Chief Officer

5.1 The Superintendent of Schools is designated as the "Chief Officer" for the purpose of the overall administration and reporting required under PIDA.

6. Designation of Designated Officer

6.1 The Associate Superintendent: Personnel, and any alternate appointed in accordance with this Administrative Procedure, is designated as the "Designated Officer" to manage and investigate disclosures under PIDA.

7. Application of this Policy to "Wrongdoings"

7.1 This administrative procedure applies to wrongdoings in or relating to the Division, its schools, departments and employees. A wrongdoing is defined as one of the following, within or relating to the Division or its employees:

7.1.1. a contravention of an Act of Alberta or Canada or any regulation made pursuant to those Acts;
7.1.2. an act or omission that creates:
   7.1.2.1 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
   7.1.2.2. a substantial and specific danger to the environment;

7.2. gross mismanagement, including an act or omission that is deliberate and that shows a reckless or willful disregard for the proper management of:
   7.2.1. public funds or a public asset;
   7.2.2. the delivery of a public service, including the management or performance of
      7.2.2.1. a contract or arrangement, including the duties resulting from the contract or arrangement or any funds administered or provided under the contract or arrangement, and
      7.2.2.2. the duties and powers resulting from an enactment or any funds administered or provided as a result of the enactment; or
      7.2.2.3. 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.

7.3. knowingly directing or counselling an individual to commit wrongdoing mentioned in clauses 7.1 to 7.2.

8. No Reprisals

8.1. An employee who, in good faith;
   8.1.1. seeks advice about making a disclosure,
   8.1.2. makes a disclosure,
   8.1.3. co-operates in an investigation of wrongdoing,
   8.1.4. declines to participate in a wrongdoing, or
   8.1.5. does anything in accordance with PIDA

        will not be subject to any reprisal as a result of the employee having taken one or more of the aforementioned actions. A reprisal means 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.

8.2. An employee may make a written complaint to the Commissioner if the employee alleges that a reprisal has been taken or directed against the employee. The written complaint must be made in the prescribed PIDA Complaint or Reprisal Form.

8.3. No action lies against the Board or an employee of the Division for making a reasonable human resource management decision in good faith.
9. Disclosures

9.1 Employees seeking advice on potential disclosure under PIDA and this Administrative Procedure may request information or advice from their supervisor, the Designated Officer, the Chief Officer or the Commissioner, who shall in each case, provide the employee with information on PIDA, this Administrative Procedure, the requirements of PIDA and this Administrative Procedure, and other alternative processes for resolution of the employee's concern.

9.2 An employee who reasonably believes that he or she has information that could show that a wrongdoing has been committed or is about to be committed, or who has been asked to commit a wrongdoing, shall make a disclosure to the Designated Officer and/or the Commissioner.

9.3 Disclosures of wrongdoing shall be made to the Designated Officer in writing and/or in writing to the Commissioner.

9.4 An employee may make a disclosure directly to the Commissioner in accordance with Section 9.3 of this Administrative Procedure, even if the Designated Officer has already made recommendations or concluded the investigation with respect to the matters being disclosed.

9.5 In the event that disclosure to the Designated Officer is not appropriate due to a conflict of interest with respect to the nature of the disclosure or the person involved, the Chief Officer may designate an alternate Designated Officer for the purpose of that disclosure. The alternate Designated Officer shall have all the powers of the Designated Officer for the purpose of that disclosure.

9.6 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 (or alternate Designated Officer, as set out in clause 9.5) shall:

9.6.1. advise the Board Chair of the nature of the disclosure, whereupon the Board may authorize an investigation into the disclosure; and

9.6.2. advise the Commissioner of the disclosure and its referral to the Board Chair and seek advice from the Commissioner concerning whether the disclosure should be referred to the Commissioner.

9.7 If the Designated Officer reasonably believes that the matter to which the disclosure relates constitutes an imminent risk to the life, health or safety of individuals, or environment, the Designated Officer shall as soon as reasonably practicable refer the disclosure to the Commissioner and shall, in addition, disclose the matter to:

9.7.1 an appropriate law enforcement agency,

9.7.2 to the Chief Medical Officer of Health in the case of a health-related matter;

9.7.3 to the department, public entity, office or prescribed service provider responsible for managing, controlling or containing the risk, if any; and

9.7.4 to a person identified in the procedures created by the Chief Officer.
The investigation of a disclosure or complaint of reprisal in accordance with PIDA shall be suspended until it has been finally disposed of by a law enforcement agency or the Minister of Justice and Solicitor General.

9.8 Notwithstanding whether a disclosure is referred to the Commissioner, where the Designated Officer is aware of:

9.8.1. 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

9.8.2. 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 Division have sufficient information to abate that risk.

9.9 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 welfare of students being threatened by the presence of an employee who is the subject of such disclosure, the Designated Officer shall advise the Chief Officer of the alleged wrongdoing for consideration of a possible administrative suspension under section 105(2) of the School Act.

9.10 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 agency and to the Minister of Justice and Solicitor General and shall suspend the investigation of a disclosure or complaint of reprisal in accordance with PIDA until any investigation of the law enforcement agency has been finally disposed of.

9.12 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 into the wrongdoing.

9.13 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.

9.14 Anonymous disclosures will be dealt with in accordance with the provisions of PIDA and this Administrative Procedure.

10. Investigations

10.1 The Designated Officer may consult with the Chief Officer and/or request advice from the Commissioner with respect to the management and investigation of a disclosure.

10.2 Upon receiving a disclosure, the Designated Officer shall make a decision whether to investigate.

10.3 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.
10.4 Where the Designated Officer is of the opinion that the subject matter of the disclosure be more appropriately dealt with according to another policy or procedure of the Division, another Act or regulation, or procedures under a collective agreement or employment contract, the Designated Officer may decline to investigate under the parameters of this Administrative Procedure and refer the disclosing employee to those alternative procedures or processes.

10.5 The Designated Officer may utilize both internal personnel and external resources, for the purpose of conducting the investigation, subject to compliance with all statutory and/or regulatory obligations.

10.6 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 Division necessary for the investigation.

10.7 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:

10.7.1. as necessary for this Administrative Procedure and to conduct the investigation in accordance with the principles of procedural fairness and natural justice;

10.7.2. in accordance with PIDA or any other applicable statute or regulation;

10.7.3. 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.

10.8 Investigations shall be conducted in accordance with the principles of procedural fairness and natural justice.

10.9 The Designated Officer may decline to investigate where the disclosure:

10.9.1. 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;

10.9.2. 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

10.9.3. does not provide adequate particulars about the wrongdoing to permit the conduct of a fair and effective investigation.

10.10 The Designated Officer is not required to investigate a disclosure or, if an investigation has been initiated, may discontinue the investigation if more than two (2) years has passed since the date that the wrongdoing was discovered.

10.11 Where disclosure has been made to the Commissioner, and an investigation is required, the investigation will be undertaken by the Commissioner in accordance with PIDA.

11. Timelines

11.1 The Designated Officer, or the Commissioner, as the case may be, shall acknowledge receipt of the disclosure of wrongdoing 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
twenty (20) business days from the date on which the disclosure of wrongdoing
or complaint of reprisal is received, of whether an investigation will be
undertaken.

11.2 The investigation must be concluded and the investigation report provided
11.2.1 to the Chief Officer in the case of an investigation of a disclosure by
the Designated Officer;
11.2.2 to the Commissioner in the case of a disclosure referred to the
Designated Officer by the Commissioner for investigation in accordance with this administrative procedure and the Act;
11.2.3 to the Chief Officer and the Designated Officer in the case of the
investigation of a disclosure by the Commissioner not more than One
Hundred Twenty (120) business days from the date on which the
disclosure of wrongdoing or complaint of reprisal was received. Any
investigation of a complaint of reprisal by the Commissioner must be
concluded with One Hundred Twenty (120) business days from the
date on which the complaint of reprisal was received. If the
Commissioner finds that a reprisal has been taken, directed or
counselled contrary to this Administrative Procedure or the Act and its
accompanying regulations, the Commissioner’s report on the
investigation must be referred to the Labour Relations Board not more
than five (5) business days from the date upon which the investigation
was concluded.

11.3 At the request of the Designated Officer, these timelines may be extended by
the Chief Officer where applicable provided that, subject to Section 11.4 of
this Administrative Procedure, the total extensions granted do not exceed the
overall time period for investigation and provision of the investigation report
by more than thirty (30) business days. The Commissioner may also extend
these timelines where applicable in accordance with PIDA.

11.4 The Chief Officer may request permission from the Commissioner to extend
timelines for a longer period of time in accordance with PIDA and the
accompanying regulations.

11.5 In the event of an extension of a timeline, either by the Chief Officer or the
Commissioner, the Designated Officer or the Commissioner, as the case may
be, shall promptly advise the person who submitted a disclosure of
wrongdoing or complaint of reprisal of when he or she may expect the next
procedural step to occur or be completed.

12. Report
12.1 Where disclosure has been made to the Designated Officer, 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.
12.2 Where the Designated Officer is considering a recommendation to the Chief
Officer that the Chief Officer exercise authority delegated to him or her by the
Board to suspend or terminate a teacher or administrative designation under the School Act, the Designated Officer shall consult with other Division staff
typically responsible for such recommendations concerning the necessary
process. In such event, the written investigation report shall be provided to the
Chief Officer in the course of any process under the School Act for the Chief
12.3 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.

12.4 The person making the disclosure 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.

12.5 Where disclosure has been made to the Commissioner, the Commissioner shall, upon completion of the investigation, prepare a report in accordance with PIDA and this Administrative Procedure.

13. Good Faith

13.1 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 duty or obligation, or an honest intention to abstain from taking any advantage of another.

13.2 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.


14.1 The Chief Officer shall prepare a report annually, which shall be publicly available, on all disclosures; that report shall include the following:

14.1.1 the number of disclosures received by or referred to the Designated Officer;

14.1.2 the number of disclosures acted on;

14.1.3 the number not acted on;

14.1.4 the number of investigations commenced;

14.1.5 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 or reasons why no corrective measure was taken.

14.2 The Chief Officer’s annual report shall not publicly:

14.2.1 identify an employee who requested advice about making a disclosure, made a disclosure or submitted a complaint of a reprisal;

14.2.2 identify an individual who anonymously submitted an allegation of wrongdoing or who is not an employee; or

14.2.3 disclose individually identifying health information.