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## WHISTLEBLOWER PROTECTION

### Background

The Division is committed to the highest standard of ethical and accountable conduct. To ensure this, 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.

The Division expects that all employees will notify the Human Resources Department of any potential wrongdoing within the operation of the Division and that the Human Resources Department will investigate such reports without impedance, providing a summary of their findings to the Superintendent, Board Chair or the Commissioner of Public Interest as appropriate.

Under the Public Interest Disclosure Act (PIDA/Whistleblower Protection), an employee of the Division may make a disclosure of a wrongdoing, which the Division will investigate in accordance with these procedures. Under PIDA, 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 and not making a frivolous/vindictive accusation.

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. Those written procedures are set out herein.

### Definitions

*Chief Officer* means the Superintendent.

*Commissioner* means the Public Interest Commissioner appointed under PIDA.

*Designated officer* means person designated below to manage and investigate disclosures under PIDA.

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

*Employee* means an individual employed by the Division.

*PIDA* means the Public Interest Disclosure (Whistleblower Protection) Act.

*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, and threats to do any of the above.

*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:
  - 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
  - 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.

## **Procedures**

1. The Human Resources Department is the designated officer for the purpose of PIDA.

2. Process for Managing and Investigating Disclosures

2.1 Receipt of Disclosures

2.1.1 Employees seeking advice on potential disclosure under PIDA and this Administrative Procedure will be referred to the designated officer, who will 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.

2.1.2 Employees will make disclosures for the purposes of PIDA and this procedure to the designated officer, utilizing the PIDA Disclosure Form (Form 403-01).

2.1.3 Disclosures will provide:

2.1.3.1 The name of the disclosing employee;

2.1.3.2 A description of the wrongdoing;

2.1.3.3 The name of the individual or individuals alleged:

2.1.3.3.1 To have committed the wrongdoing, or

2.1.3.3.2 To be about to commit the wrongdoing;

2.1.3.4 The date of the wrongdoing.

2.1.4 The designated officer will acknowledge receipt of the disclosure to the employee making the disclosure within five (5) business days from receipt of the disclosure.

2.2 Preliminary Handling of Disclosures

2.2.1 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 will report the subject matter of the disclosure to the designated officer of that other entity.

- 2.2.2 Where an alternative process exists for the handling of the subject matter of the disclosure under:
    - 2.2.2.1 Another policy or procedure of the Division for example, Administrative Procedure 175 – Protection of Staff; AP 171 (Violence and Harrassment in the Workplace) or Administrative Procedure 422 – Teacher Growth, Supervision and Evaluation;
    - 2.2.2.2 Another Act or regulation (for example, human rights or occupational health and safety legislation); or
    - 2.2.2.3 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.
  - 2.2.3 The designated officer may decline to investigate the disclosure where the disclosure:
    - 2.2.3.1 Is clearly frivolous or vexatious, 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,
    - 2.2.3.2 Relates to a decision, action or matter that resulted from a balanced and informed decision-making process on a public policy or operational issue, or
    - 2.2.3.3 Does not provide adequate particulars about the wrongdoing to permit the conduct of a fair and effective investigation.
  - 2.2.4 If more than one (1) disclosure is made of a single wrongdoing, the designated officer may conduct a single investigation into the wrongdoing.
  - 2.2.5 The designated officer will advise the employee making the disclosure whether the disclosure will or will not be investigated within ten (10) business days from receipt of the disclosure.
- 2.3 Mandatory Disclosures to Others
- 2.3.1 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 will as soon as reasonably practical refer the disclosure to the Commissioner.
  - 2.3.2 Notwithstanding whether a disclosure is referred to the Commissioner, the designated officer will also ensure that appropriate persons within the Division have sufficient information to act to abate that risk, where the designated officer is aware:
    - 2.3.2.1 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
    - 2.3.2.2 That the alleged wrongdoing, if true, may threaten the welfare of students, staff, or the safe and caring environment of the school.
  - 2.3.3 At any point following a disclosure, if 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 will advise the

Superintendent of the alleged wrongdoing for consideration of a possible administrative suspension under the Education Act.

- 2.3.4 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 will report the potential offence to the appropriate law enforcement authorities.
- 2.4 Investigations
- 2.4.1 The designated officer will conduct all investigations in accordance with the principles of natural justice and procedural fairness.
  - 2.4.2 The designated officer may utilize internal personnel and resources, and may retain outside personnel or resources, for the purpose of conducting the investigation.
  - 2.4.3 The designated officer, and any person conducting an investigation on their behalf, may interview any person and will have access to any documents of the Division necessary for the investigation.
  - 2.4.4 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 will investigate that other potential wrongdoing as if a disclosure had been made.
- 2.5 Report
- 2.5.1 The designated officer will provide a written investigation report to the chief officer detailing whether the disclosure was substantiated, and providing recommendations on corrective action.
  - 2.5.2 The investigation will be completed and the written investigation report provided to the chief officer no later than one hundred and twenty (120) business days from the date the disclosure was received.
  - 2.5.3 Where the designated officer is considering a recommendation to the Superintendent that the Superintendent exercise authority delegated to them by the Board to suspend or terminate a teacher or administrative designation, under the Education Act, the designated officer will consult with other Division staff typically responsible for such recommendations concerning the necessary process. In such event, the written investigation report will be provided to the Superintendent in the course of any process under the Education Act for the Superintendent to consider that recommendation.
  - 2.5.4 The chief officer will consider the recommendations in the investigation report, and will be responsible for determining what action, if any, including disciplinary action, will be either taken as a result or recommended to the Board. The chief officer will follow-up with the employees responsible to ensure those actions are taken.
  - 2.5.5 The person making the complaint will 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.
- 2.6 Extensions of Timelines
- 2.6.1 The designated officer may request of the chief officer, and the chief officer

may grant, extensions of timelines within this Administrative 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 thirty (30) business days.

- 2.6.2 The chief officer may request permission from the Commissioner to extend timelines for a longer period.
- 2.6.3 In the event of an extension of a timeline, the designated officer will promptly advise the person who submitted a disclosure of wrongdoing when they may expect the next procedural step to occur or be completed.

### 3. Conflicts of Interest / Disclosures About the Officers

- 3.1 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 will request the chief officer to designate an alternative designated officer for the disclosure. The alternative designated officer will have all the powers of the designated officer for the purpose of the disclosure.
- 3.2 In the event of a disclosure to the designated officer concerning the conduct of the chief officer, or concerning a conflict of interest of the chief officer, the designated officer will:
  - 3.2.1 Advise the Board Chair of the nature of the disclosure, whereupon the Board may authorize an investigation into the disclosure;
  - 3.2.2 Advise the Commissioner of the disclosure and its referral to the Board, and seek advice from the Commissioner concerning whether the disclosure is to be referred to the Commissioner.

### 4. Confidentiality

- 4.1 The designated officer will 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:
  - 4.1.1 As necessary for this Administrative Procedure and to conduct the investigation in accordance with the principles of procedural fairness and natural justice;
  - 4.1.2 In accordance with PIDA or any other statute;
  - 4.1.3 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.

### 5. Reprisals

- 5.1 If an employee has alleged that a reprisal as described by PIDA has taken place or been directed, they are to immediately report this to the designated officer using Form 403-02 – PIDA Reprisal Complaint Form.
- 5.2 The employee may:
  - 5.2.1 Request that the designated officer offer a resolution; or
  - 5.2.2 Pursue recourse actions under a collective agreement; or
  - 5.2.3 Pursue recourse actions under PIDA.

## 6. Annual Reporting

6.1 The Annual Education Results Report of the Division will include the following statistics on this Administrative Procedure:

6.1.1 The number of disclosures received by the designated officer, the number of disclosures acted on and the number of disclosures not acted on by the designated officer;

6.1.2 The number of investigations commenced by the designated officer as a result of disclosures;

6.1.3 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.

Reference: Section 33,52,53,68,196,197,203,204,222,225 Education Act  
Public Interest Disclosure (Whistleblower Protection) Act  
Teaching Profession Act  
Public Interest Disclosure (Whistleblower Protection) Regulation  
ATA Code of Professional Conduct

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