

AP 117

Whistleblower - *Public Interest Disclosure Act*

Background

The Board of Education is committed to honesty, integrity, and accountability in its operations, programs, and services and to promoting a culture of openness and transparency. The School District encourages and supports all personnel in bringing forward reports of unlawful acts and acts of Wrongdoing in a manner consistent with the provisions of the British Columbia *Public Interest Disclosure Act* (“PIDA”).

The purpose of this administrative procedure is to establish a process, in compliance with PIDA, for employees and trustees to report, in good faith, wrongful or unlawful conduct without fear of retaliation or reprisal.

The Board of Education is also committed to meeting its obligations to protect personal information collected under or in connection with this administrative procedure in accordance with PIDA and the *Freedom of Information and Protection of Privacy Act* (“FIPPA”) or (the “Act”).

Definitions

“**Advice**” means advice that may be requested in respect of making a disclosure or a complaint about a reprisal under this administrative procedure or the PIDA.

“**Designated Officer**” means the Superintendent and any other personnel designated by the Superintendent, including the Secretary-Treasurer and the Chairperson of the Board of Education.

“**Discloser**” means an employee or trustee who makes a disclosure or seeks advice or makes a complaint about a reprisal.

“**Disclosure**” means a report of Wrongdoing made under this administrative procedure.

“**Employee**” refers to a past and present employee of the School District.

“**Investigation**” means an investigation undertaken by the School District under this administrative procedure or by the Ombudsperson under PIDA.

“**Ombudsperson**” means the Ombudsperson of British Columbia

“**Personal Information**” has the same meaning set out in FIPPA, namely “recorded information about an identifiable individual,” and includes any information from which the identity of the Discloser or any person who is accused of Wrongdoing or participates in an investigation can be deduced or inferred.

“**PIDA**” means a *Public Interest Disclosure Act* of British Columbia, and all regulations thereto.

“**Protection Official**” means:

- a) In respect of a health-related matter, the provincial health officer;

- b) In respect of an environmental matter, the agency responsible for the *Emergency Program Act*, or
- c) In any other case, a police force in British Columbia.

“Referral” means a report of Wrongdoing that is referred to the district by another organization or third party under the PIDA.

“Reprisal” means the imposition of, and any threat to impose, discipline, demotion, termination, or any other act that adversely affects employment or working condition of a member of personnel because they made a disclosure, sought advice, made a complaint about a reprisal, or participated in an investigation.

“Respondent” means a person against whom allegations of Wrongdoing or a complaint of reprisal is made.

“Supervisor” includes: an employee’s direct management supervisor; for school-based employees, the Principal, or any Vice-Principal as the School where the employee is assigned; and for trustees, the Board Chairperson or the Superintendent of Schools.

“Trustee” means a past or present member of the School District’s Board of Education

“Urgent Risk” arises when a member of personnel reasonably believes that a matter constitutes an imminent risk of a substantial and specific danger to the life, health or safety of persons or to the environment.

“Wrongdoing” refers to:

- a) a serious act or omission that, if proven, would constitute an offence under an enactment of British Columbia or Canada.
- b) an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of an employee’s duties or functions.
- c) a serious misuse of public funds or public assets.
- d) gross or systematic mismanagement.
- e) knowingly directing or counselling a person to commit any act or omission described in paragraphs (a) to (d) above.

Procedures

1. Who May Make a Disclosure

1.1 Any employee may report a Wrongdoing under this administrative procedure if the alleged Wrongdoing occurred while the employee was employed or engaged by the district.

1.2 Any trustee may report Wrongdoing under this administrative procedure if the alleged Wrongdoing occurred while the trustee was holding office.

- 1.3 Complaints or reports received from members of the public or from employees or trustees who were not engaged by the School District at the time that Wrongdoing occurred or is alleged to have occurred are outside the scope of this Procedure.

2. How to Make a Disclosure

- 2.1 An employee or trustee who reasonably believes that a Wrongdoing has been committed, may make a disclosure to any of the following:
- their Supervisor
 - the Superintendent
 - a Designated Officer other than the Superintendent
 - the Ombudsperson
- 2.2 A disclosure should be submitted in writing and include the following information, if known:
- a description of the Wrongdoing.
 - the name of the person(s) alleged to be responsible for or to have participated in the Wrongdoing.
 - the date or approximate date of the Wrongdoing.
 - if the Wrongdoing relates to an obligation under a statute or enactment, the name of that statute or enactment.
 - whether Wrongdoing has already been reported, and if so, to whom and the description of the response received.
- 2.3 A disclosure may be submitted to the School District on an anonymous basis but must contain sufficient information to permit the School District to conduct a full and fair investigation into the alleged Wrongdoing. If a disclosure does not contain sufficient detail to permit investigation, the School District may take no action with respect to the disclosure. Any notices required to be given to a Discloser under this administrative procedure, or the PIDA will not be provided to an anonymous Discloser, except at the discretion of the Designated Officer and where the Discloser has provided contact information.
- 2.4 A Discloser who is considering make a disclosure may request advice from their union representative, a lawyer, their supervisor, a Designated Officer, or the Ombudsperson.
- 2.5 A Discloser should not make a disclosure to a person if the allegations relate, in whole or in part, to Wrongdoing by that person, any person who receives a disclosure (or referral of a disclosure from another person), and reasonably believes that the allegations of Wrongdoing relate to their own acts or omissions must refer the allegations of Wrongdoing to another person under this administrative procedure with responsibility for receiving disclosure.

3. How to Make a Disclosure about Urgent Risk

- 3.1 The PIDA permits employees and trustees to make public disclosures if the employee or trustee reasonably believes that a matter poses an urgent risk. An urgent risk only arises if there is reasonable and credible evidence of an imminent risk of substantial and specific danger to the life, health, or safety of persons or to the environment.
- 3.2 Before making a public disclosure of an urgent risk the employee or trustee must:
- consult with the relevant Protection Official (public health officer, emergency management BC, or police).
 - receive and follow the direction of that Protection Official, including if the Protection Official directs the employee not to make the public disclosure.
 - refrain from disclosing, publishing or otherwise sharing personal information except as necessary to address the urgent risk.
 - seek appropriate advice if the employee is uncertain about what personal information, privileged or other information may be disclosed as part of a public disclosure.
- 3.3 An employee who makes a public disclosure in relation to an urgent risk is expected to provide timely notification to their Supervisor or the Superintendent about the public disclosure or submit a disclosure in accordance with section 2 above.
- 3.4 If the employee decides not to make a public disclosure or is directed by a Protection Official not to do so, the employee is nevertheless expected to report urgent risks without delay to the Superintendent or a Designated Officer.

4. Referral of Disclosure to Designated Officer

- 4.1 Each Supervisor or other personnel who receives a disclosure or referral under this administrative procedure must promptly refer the disclosure or referral, including all written disclosures and other materials supplied, to the appropriate Designated Officer as follows:
- a) unless the allegations concern alleged Wrongdoing by the Superintendent, the disclosure or referral shall first be referred to the Superintendent, who may delegate their duties under the administrative procedure to any other Designated Officer.
 - b) if the allegations concern alleged Wrongdoing by the Superintendent, then the disclosure or referral should be referred to the Secretary-Treasurer who shall act as the Designated Officer.
 - c) if the allegations made in a disclosure or referral concern alleged Wrongdoing by both the Superintendent and the Secretary -Treasurer, then the disclosure or referral should

be referred to the Chair of the Board of Education as the Designated Officer or any other Designated Officer.

- d) if the allegations made in a disclosure or referral concern Wrongdoing by all the Designated Officers listed in subparagraphs a), b) and c) above, then the disclosure or referral should be referred to the Ombudsperson.

5. Responsibilities of the Designated Officer

5.1 The Designated Officer is responsible to:

- Receive and respond to any disclosure or referral.
- Receive and respond to reports made by personnel about urgent risks.
- If the Designated Officer reasonably believes that an urgent risk exists, the Designated Officer may make a report to the relevant Protection Official.
- Review allegations of Wrongdoing in a disclosure or referral and determine if they fall within the scope of the PIDA or this administrative procedure.
- Refer disclosures or allegations falling outside the scope of the PIDA or this administrative procedure to the appropriate authority or dispute resolution process, as applicable.
- If a disclosure relates to Wrongdoing at another government body that is subject to the PIDA, refer the Disclosure to that institution.
- Seek clarification of the allegations of Wrongdoing from the Discloser or referring institution as needed.
- If appropriate, initiate an investigation into allegations of Wrongdoing in accordance with section 7 below.
- Assess the risk of any reprisal to the discloser, and take appropriate action, if any, to mitigate that risk.
- Manage communications with the Discloser and Respondent.
- Notify the Discloser and the Respondent of the outcome of the investigation in accordance with section 8.
- Ensure that, in accordance with section 8 of this administrative procedure, all personal information received by the School District related to the disclosure, referral, request for advice or any investigation is appropriately protected against such risks as unauthorized access, collection, use, disclosure, theft or loss in accordance with FIPPA and the PIDA.

6. Responsibilities of Employees

6.1 All employees and trustees are responsible to:

- make any disclosures in good faith and based on a reasonable belief that Wrongdoing has or is expected to occur.
- refrain from engaging in reprisals and report all reprisals in accordance with this administrative procedure and the PIDA.
- maintain the confidentiality of personal information received in connection with a disclosure, referral, request for advice or investigation in accordance with this administrative procedure, and the PIDA.

- provide their reasonable cooperation with investigations by the School District or the Ombudsperson.
- seek appropriate advice if an employee is uncertain about whether to make a disclosure or a public disclosure of an urgent risk.
- comply with the requirements of this administrative procedure and the PIDA concerning urgent risks.

7. Investigations

- 7.1 Every person involved in receiving, reviewing, and investigating disclosures, referrals or complaints of reprisals must carry out those function in an expeditious, fair and proportionate manner as appropriate in the circumstances and as required under the PIDA.
- 7.2 The Designated Officer shall seek to complete all investigations within 30 calendar days of receipt of a disclosure or referral or complaint of reprisals, but the Designated Officer may shorten or extend this time depending on the nature and complexity of the allegations.
- 7.3 The Designated Officer may refer a matter to an internal or external investigator and expand the scope of any investigation beyond the allegations set out in the disclosure or referral to ensure that any potential Wrongdoing discovered during an investigation is investigated.
- 7.4 All investigations shall be conducted by an internal or external investigator with sufficient qualifications and experience to carry out the investigation.
- 7.5 The Designated Officer may consult with the Ombudsperson regarding a disclosure or referral or refer allegations of Wrongdoing in whole or in part to the Ombudsperson, provided that notice of the referral is provided to the applicable discloser.
- 7.6 The Designated Officer may refuse to investigate or postpone or stop an investigation if the Designated Officer reasonably believes that:
- the disclosure or referral does not provide adequate particulars of the Wrongdoing;
 - the disclosure or referral is frivolous or vexatious, has not been made in good faith, has not been made by a person entitled to make a disclosure or referral under the administrative procedure or the PIDA, or does not deal with Wrongdoing;
 - the investigation would serve no useful purpose or could not reasonably be conducted due to the passage or length of time between the date of the alleged Wrongdoing and the date of the disclosure or referral;
 - the disclosure relates solely to a public policy decision;
 - the allegations are already being or have been appropriately investigated by the Ombudsperson, the School District or other appropriate authority;
 - the investigation may compromise another investigation; or
 - the PIDA otherwise requires or permits the School District to suspend or stop the investigation.

7.7 Subject to the School District's privacy obligations under FIPPA and the PIDA, the Discloser and the Respondent(s) will be provided with a summary of the School District's findings, including:

- notice of any finding of Wrongdoing.
- a summary of the reasons supporting any finding of Wrongdoing.
- any recommendations to address findings of Wrongdoing.

8. Privacy and Confidentiality

8.1 All personal information the School District collects, uses or shares in connection with a disclosure, referral, or request for advice, or an investigation shall be treated as confidential and shall be used and disclosed by the School District only as described in the administrative procedure, and PIDA unless otherwise permitted or required under FIPPA or other applicable laws.

8.2 Personal information that is collected, used or shared by the School District in the course of receiving, responding to or investigating a disclosure, a request for advice, a referral, or a complaint of a reprisal shall be limited to the personal information reasonably required for these purposes.

8.3 Any person who, in their capacity as an employee or trustee of the School District, receives information about the identity of a Discloser shall maintain the identity of the Discloser in confidence, and may only use or share that information for the purposes described in this administrative procedure, or the PIDA, except with the consent of the Discloser or as authorized or required by the PIDA or other applicable laws.

8.4 The School District shall ensure there are reasonable security measures in place to protect all personal information the School District collects or uses in the course of receiving or responding to a disclosure, a request for advice, a referral, or complaint of a reprisal or conducting an investigation, including by ensuring that such information is subject to appropriate controls to ensure that it is only shared by its employees and trustees internally on a need to know basis.

9. Reprisals

9.1 The School District will not tolerate reprisals against employees or trustees.

9.2 Any employee or trustee who believes they have been the subject of a reprisal may make a complaint to:

- the Ombudsperson, who may investigate in accordance with the procedures set out in the PIDA; or
- to a Designated Officer, who shall investigate the complaint in accordance with the provisions of this administrative procedure.

9.3 Any member of personnel who engages in any reprisals shall be subject to disciplinary action up to and including dismissal.

10. Reporting

10.1 The Superintendent or Designated Officer shall prepare an annual report to the Board outlining the number of disclosures made, number requiring investigation and/or further action.