

Administrative Procedure 404

PUBLIC INTEREST DISCLOSURE (WHISTLEBLOWER PROTECTION)

Background

The *Public Interest Disclosure (Whistleblower Protection) Act* ("PIDA") came into force on June 1, 2013. The purpose of PIDA is to ensure the disclosure and investigation of wrongdoing in the public sector by establishing internal process within public bodies for disclosure, and protecting public employees from reprisal for making a disclosure. PIDA also establishes the office of the Public Interest Commissioner (the "Commissioner") to act as an outside "appeal" body for whistleblowers who are dissatisfied with the results of the internal process.

School boards were designated as public entities to which PIDA applies by the PIDA Regulation. The Superintendent of each school board was designated as "Chief Officer" of the board for the purposes of PIDA.

PIDA and its Regulation require the chief officers of school boards to adopt written procedures for managing and investigating disclosures by employees, and provide minimum requirements for those written procedures.

Definitions

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

Chief Officer or Chief Executive Officer (CEO) means the Superintendent of Schools.

Designated Officer means the person designated below to manage and investigate disclosures 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 operating policy.

Wrongdoing means:

1. 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.

2. 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.
3. Gross mismanagement, including an act or omission that is deliberate and that shows a reckless or willful disregard for the proper management of:
 - 3.1 Public funds or a public asset,
 - 3.2 The delivery of a public service, including the management or performance of:
 - 3.2.1 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
 - 3.2.2 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.
 - 3.3 Employees, by a pattern of behavior or conduct of a systemic nature that indicates a problem in the culture of the organization relating to bullying, harassment or intimidation.
4. 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, 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. Purpose
 - 1.1 On June 1, 2013, the Public Interest Disclosure (Whistleblower Protection) Act (PIDA) came into force in Alberta. The purpose of PIDA is to:
 - 1.1.1 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,
 - 1.1.2 Protect employees who make those disclosures,
 - 1.1.3 Manage, investigate and make recommendations respecting disclosures of wrongdoings and reprisals, and
 - 1.1.4 Promote public confidence in the administration of public entities.
 - 1.2 The Board of Trustees 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 board, and to promote public confidence in the administration of the Board.

- 1.3 To ensure this, the Board of Trustees 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.
- 1.4 Under PIDA, an employee of the school board may make a disclosure of a wrongdoing, which the school board 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.
- 1.5 The school board is required 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.

2. Designated Officer

- 2.1 The Associate Superintendent, Human Resources and Administration is appointed as the Designated Officer for the purpose of PIDA.

3. Receipt of Disclosures

- 3.1 Employees seeking advice on potential disclosure under PIDA and this policy will be referred to the Designated Officer or the direct supervisor, who will provide the employee with information on PIDA, the requirements of PIDA and this operating policy, and other alternative processes for resolution of the employee's concern.
- 3.2 Employees will make disclosures for the purposes of PIDA and this operating policy either to the Designated Officer or to the Public Interest Commissioner, utilizing the PIDA Disclosure Form.
- 3.3 Disclosures will provide:
 - 3.3.1 The name of the disclosing employee,
 - 3.3.2 A description of the wrongdoing,
 - 3.3.3 The name of the individual or individuals alleged to have committed the wrongdoing, or to be about to commit the wrongdoing, and
 - 3.3.4 The date of the wrongdoing.
- 3.4 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.

4. Preliminary Handling of Disclosures

- 4.1 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.
- 4.2 Where an alternative process exists for the handling of the subject matter of the disclosure under:

- 4.2.1 Another policy of the Board such as those referring to Harassment; Administrative Procedure 171 – Threatening Behaviour, or Board Policy 19 – Welcoming, Caring, Respectful, Safe and Healthy Learning and Working Environments,
 - 4.2.2 Another Act or regulation (for example, human rights or occupational health and safety legislation), or
 - 4.2.3 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.
- 4.3 Where the disclosure:
- 4.3.1 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,
 - 4.3.2 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
 - 4.3.3 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.
- 4.4 If more than one disclosure is made of a single wrongdoing, the Designated Officer may conduct a single investigation into the wrongdoing.
- 4.5 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.

5. Mandatory Disclosures to Others

- 5.1 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 practicable refer the disclosure to:
 - 5.1.1 An appropriate law enforcement agency,
 - 5.1.2 In the case of a health-related matter, to the Chief Medical Officer of Health,
 - 5.1.3 To the department, public entity or office responsible for managing, controlling or containing the risk, if any, and
 - 5.1.4 To a person identified in the procedures created by the Chief Officer.
- 5.2 Notwithstanding whether a disclosure is referred to the Commissioner, where the Designated Officer is aware of:
 - 5.2.1 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

- 5.2.2 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 will also ensure that appropriate persons within the school board have sufficient information to act to abate that risk.
- 5.3 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 a teacher, the Designated Officer will advise the Superintendent of the alleged wrongdoing for consideration of a possible administrative suspension.
- 5.4 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.

6. Investigations

- 6.1 The Designated Officer will conduct all investigations in accordance with the principles of natural justice and procedural fairness.
- 6.2 The Designated Officer may utilize internal personnel and resources, and may retain outside personnel or resources, for the purpose of conducting the investigation.
- 6.3 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 school board necessary for the investigation.
- 6.4 Where, in the course of an investigation, the Designated Officer had 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.

7. Report

- 7.1 The Designated Officer will provide a written investigation report to the Superintendent detailing whether the disclosure was substantiated, and providing recommendations on corrective action.
- 7.2 The investigation will be completed and the written investigation report provided to the Superintendent no later than one hundred and ten (110) business days from the date the disclosure was received.
- 7.3 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 or terminate a teacher or administrative designation under the Education Act, the Designated Officer will consult with other Board 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.
- 7.4 The Superintendent 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 of Trustees. The Superintendent will follow-up with the employees responsible to ensure those actions are taken.

- 7.5 The person making the complaint will be advised when the investigation is completed, the recommendations made in the written investigation report, and the actions of the Superintendent resulting from the written investigation report.

8. Extensions of Timelines

- 8.1 The Designated Officer may request of the Superintendent, and the Superintendent 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 thirty (30) business days.
- 8.2 The Superintendent may request permission from the Commissioner to extend timelines for a longer period.
- 8.3 In the event of an extension of a timeline, the Designated Officer will promptly advise the person who submitted a disclosure of wrongdoing when he/she may expect the next procedural step to occur or be completed.

9. Conflicts of Interest / Disclosures About the Superintendent

- 9.1 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 of alleged wrongdoing, the Designated Officer will request the Superintendent 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.
- 9.2 In the event of a disclosure to the Designated Officer concerning the conduct of the Superintendent, or concerning which the Superintendent has a conflict of interest, the Designated Officer will:
 - 9.2.1 Advise the Board Chair of the nature of the disclosure, whereupon the Board of Trustees may authorize an investigation into the disclosure, and
 - 9.2.2 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.

10. Confidentiality

- 10.1 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:
 - 10.1.1 As necessary for this procedure and to conduct the investigation in accordance with the principles of procedural fairness and natural justice,
 - 10.1.2 In accordance with PIDA or any other statute, and
 - 10.1.3 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.

11. Reprisals

- 11.1 No person will 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, co-operated in an investigation under this policy, declined to participate in a wrongdoing or done anything in accordance with this policy.
 - 11.1.1 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,
 - 11.1.2 Any measure, other than one mentioned in clause (11.1.1), that adversely affects the employee's employment or working conditions, or
 - 11.1.3 A threat to take any of the measures mentioned in clauses (11.1.1) or (11.1.2).

12. Complaints of Reprisals

- 12.1 An employee may make a written complaint to the Designated Officer, or to the Commissioner, utilizing the PIDA Complaint of Reprisal Form, if the employee alleges that a reprisal has been taken or directed against the employee.

13. Annual Report

- 13.1 The Superintendent or designate will prepare a report annually on all disclosures that have been made or referred to the Designated Officer.
- 13.2 The report will include the following information:
 - 13.2.1 The number of disclosures received or referred to the Designated Officer, the number of disclosures acted on and the number of disclosures not acted on by the Designated Officer,
 - 13.2.2 The number of investigations commenced by the Designated Officer as a result of disclosures, and
 - 13.2.3 In the case where wrongdoing is found, a description of the wrongdoing and any recommendations or corrective measures taken or the reasons why no corrective measures were taken.

Reference: Section 33, 52, 53, 68, 196, 197, 203, 204, 222, 225 Education Act
Administrative Procedure 171 - Threatening Behaviour
Board Policy 19 – Welcoming, Caring, Respectful, Safe and Healthy Learning and Working Environments
Executive Limitation # 3 (Treatment of Staff)
Executive Limitation # 8 (Asset Protection)
Section 5, The Public Interest Disclosure Act
The Public Interest Disclosure Regulations

Form: Form 404-1 - PIDA Disclosure
Form 404-2 - PIDA Complaint of Reprisal