PUBLIC INTEREST DISCLOSURE

Background
On June 1, 2013, the Public Interest Disclosure (Whistleblower Protection) Act (“PIDA”) came into force in Alberta with amendments on March 1, 2018. The purpose of PIDA is to:

- 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;
- protect employees who make those disclosures;
- manage, investigate and make recommendations respecting disclosures of wrongdoings and reprisals; and
- promote public confidence in administration of public entities.

Objective
HPSD is committed to the highest standard of ethical and accountable conduct, and recognizes the importance of working to deter and detect wrongdoing within the operation of the school board, and to promote public confidence in the administration of the board. To ensure this, HPSD 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.

Under PIDA, an employee of HPSD 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.

HPSD 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 board. Those written procedures are set out herein.

Definitions
Chief Officer (not capitalized in this document) – the Superintendent.

Commissioner – the Public Interest Commissioner appointed under PIDA.

Designated Officer – the person designated to manage and investigate disclosures under PIDA; the designated officer is the Director of Business.

Disclosure – disclosure of wrongdoing made in good faith by an employee under PIDA and this Administrative Procedure.

Employee – an individual employed by the school board.

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

Reprisal – any adverse employment action taken against an employee who seeks advice on making a disclosure, makes a disclosure, 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 (e.g. bullying), and threats to do any of the above.

Wrongdoing – 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, including:

- *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 any employee, or a substantial and specific danger to the environment.*
- *gross mismanagement, including an act or omission that is deliberate and that shows a reckless or willful disregard for the proper management of:*
  - *public funds or a public asset.*
  - *the delivery of a public service, including the management or performance of*
    - *a contract or arrangement identified or described in the regulations, including duties resulting from the contract or arrangement or any funds administered or provided under the contract or arrangement.*
    - *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.*
  - *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.*
- *Knowingly directing or counseling an individual to commit a wrongdoing mentioned above.*

Procedures

1. Receipt of Disclosures

1.1. Employees seeking advice on potential disclosure under PIDA and this policy shall be referred to their supervisor or the Designated Officer, who shall provide the employee with information on PIDA, this Administrative Procedure, the requirements of PIDA and other alternative processes for resolution of the employee's concern.

1.2. Employees shall make disclosures for the purposes of PIDA and this administrative procedure to the Designated Officer or to the Public Interest Commissioner, utilizing the PIDA Disclosure Form attached hereto.

1.3. Disclosures shall provide:

1.3.1. the name of the disclosing employee.

1.3.2. a description of the wrongdoing.

1.3.3. the name of the individual or individuals alleged to have committed the wrongdoing, or about to commit the wrongdoing.

1.3.4. the date of the wrongdoing.

1.4. The Designated Officer shall acknowledge receipt of the disclosure to the employee making the disclosure within 5 business days from receipt of the disclosure.

2. Preliminary Handling of Disclosures

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 shall report the subject matter of the disclosure to the Designated Officer of that other entity.

2.2. Where an alternative process exists for the handling of the subject matter of the disclosure under:

2.2.1. another Administrative Procedure of the board (for example, #460 Harassment, #414 Teacher Growth, Supervision and Evaluation, etc.).

2.2.2. another Act or regulation (Freedom of Information and Protection of Privacy, Occupational Health and Safety etc.).

2.2.3. procedures under a collection agreement or employment contract; and the Designated Officer is of the opinion that the subject matter of the disclosure would be more appropriately be dealt with under an alternative process, the Designated Officer may refer the disclosing employee to those procedures.

2.3. Where the disclosure:

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.

2.3.2. relates to a decision, action or matter that results from a balanced and informed decision-making process on a public policy or operational issues.

2.3.3. 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.

2.4. If more than one disclosure is made of a single wrongdoing, the Designated Officer may conduct a single investigation into the wrongdoing.

2.5. The Designated Officer shall advise the employee making the disclosure whether the disclosure will or will not be investigated within 10 business days from receipt of the disclosure.

3. Mandatory Disclosures to Others

3.1. 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 to the environment, the Designated Officer shall report the matter to:

3.1.1. an appropriate law enforcement agency.

3.1.2. in the case of a health-related matter, to the Chief Medical Officer of Health.

3.1.3. to the department, public entity or office responsible for managing, controlling or containing the risk, if any.

3.1.4. to a person identified in the procedures created by the chief officer.

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

3.2.1. 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

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, the Designated Officer shall also ensure that appropriate persons within the school board have sufficient information to act to abate that risk.

3.3. 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 shall advise the Superintendent of the alleged wrongdoing for consideration of a possible administrative suspension under Section 213(2) of the Education Act.

3.4. Where in the course of an investigation the Designated Officer has reason to believe than 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 authorities.

3.5. In circumstances where the chief or Designated Officer has reason to believe that an offence has been committed under a statute or regulation, the Act requires the offence be reported to a law enforcement agency and to the Minister of Justice and Solicitor General as soon as reasonably possible.

4. Investigations

4.1. The Designated Officer shall conduct all investigations in accordance with the principles of natural justice and procedural fairness.

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.

4.3. The Designated Officer, and any person conducting an investigation on their behalf, may interview any person and shall have access to any documents of the school board necessary for the investigation.

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 shall investigate that other potential wrongdoing as if a disclosure had been made.

4.5. If the matter has been reported to a law enforcement agency, investigations into the matter must be suspended until it has been finally disposed of by a law enforcement agency or the Minister of Justice and Solicitor General.

5. Report

5.1. The Designated Officer shall provide a written investigation report to the chief officer detailing whether the disclosure was substantiated, and providing recommendations on corrective action.

5.2. The investigation shall be completed and the written investigation report provided to the chief officer no later than 110 business days from the date the disclosure was received.
5.3. 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 shall consult with other board staff typically responsible for such recommendations concerning the necessary process. In such 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.
5.4. 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 either taken as a result or recommended to the Board of Trustees. The chief officer shall follow-up with the employees responsible to ensure those actions are taken.
5.5. The person making the complaint shall be advised when the investigation is completed, the general recommendations made in the written investigation report, and the chief officer's actions resulting from the written investigation report.
5.6. Every chief officer must prepare a report annually on all disclosures made or referred to the Designated Officer. The following information must be included:
   5.6.1. the number of disclosures received or referred to the Designated Officer.
   5.6.2. the number of disclosures acted on;
   5.6.3. the number of disclosures not acted on;
   5.6.4. the number of investigations commenced by the Designated Officer;
   5.6.5. in cases 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.
5.7. The chief officer's report must be publicly available.

6. Extension of Timelines

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 30 business days.
6.2. The chief officer may request permission from the Commissioner to extend timelines for a longer period.
6.3. In the event of an extension of a timeline, the Designated Officer shall promptly advise the person who submitted a disclosure of wrongdoing when he or she may expect the next procedural step to occur or be completed.

7. Conflicts of Interest/Disclosures about the Chief Officer

7.1. 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 shall request the chief officer to designate an alternative Designated Officer for the disclosure. The alternative Designated Officer shall have all the powers of the Designated Officer for the purpose of the disclosure.
7.2. 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:
   7.2.1. advise the Board Chair of the nature of the disclosure, whereupon the Board of Trustees may authorize an investigation into the disclosure.
   7.2.2. 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.

8. Confidentiality

8.1. 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:

8.1.1. as necessary for this administrative procedure and to conduct the investigation in accordance with the principles of procedural fairness and natural justice;

8.1.2. in accordance with PIDA or any other statute;

8.1.3. 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.

8.2. The chief officer is specifically restricted from publicly identifying, in their annual report, an employee who sought advice, made a disclosure, or made a complaint of reprisal, and from disclosing individually identifying health information.

9. Reprisal

9.1. No person shall 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 Act, declined to participate in a wrongdoing or done anything in accordance with this Act:

9.1.1. a 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;

9.1.2. any measure, other than one mentioned in the above clause that adversely affects the employee’s employment or working conditions;

9.1.3. a threat to take any of the measures mentioned in the above clauses.

9.2. If, following an investigation, the Commissioner finds that a reprisal occurred, the Commissioner is obligated to refer the decision to the Labour Relations Board for determination as the appropriate remedy.

9.3. If, following an investigation, the Commissioner finds that a reprisal occurred, this Act includes the ability for employees to obtain financial remedies.

9.4. If, following an investigation, the Commissioner finds that a reprisal occurred, organizations and their managers may be subject to prosecutions and/or may be required to make financial restitution.

HPSD Forms

Form 172A - Public Interest Disclosure

References

Public Interest Disclosure (Whistleblower Protection) Act
Education Act