

## Administrative Procedure 177

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### AP 177 – SAFE DISCLOSURE OF COMPLAINTS RELATED TO STAFF INCLUDING MANAGEMENT

#### Purpose

The District is committed to supporting ethical conduct in its operations and seeks to foster a culture of which Employees are encouraged to disclose Wrongdoing, including by receiving, investigation and responding to Disclosures and by providing information and training about British Columbia *Public Interest Disclosure Act* (“PIDA”).

The School District will investigate Disclosures that it receives under this Administrative Procedure. Investigation under this Procedure will be carried out in accordance with the principles of procedural fairness and natural justice.

The School District will not commit or tolerate Reprisal against any Employee who, in good faith, makes a request for Advice, makes a Disclosure, participates in an Investigation, or makes a complaint under this procedure.

The School District is committed to protecting the privacy of Disclosures, persons accused of Wrongdoing, and those who participate in Investigations in a manner that is consistent with its obligations under PIDA and the *Freedom of Information and Protection of Privacy Act* (FIPPA).

This Administrative Procedure outlines a process, in compliance with PIDA, for individuals to report, in good faith, wrongful or unlawful conduct without fear of retaliation or reprisal.

#### Definitions

The following capitalized terms are defined as indicated:

**Advice:** Advice that may be requested in respect of making a Disclosure or a complaint about a Reprisal under this Procedure or PIDA;

**Discloser:** The individual who has brought forward a report of Wrongdoing.

**Disclosure:** A report of Wrongdoing made under this Procedure which includes allegations of Wrongdoing received by the School District from the Ombudsperson or another government institution for investigation in accordance with PIDA.

**Designate:** The individual appointed by the Superintendent to:

- a) Provide information and advice to individuals making a report;
- b) Protect the confidentiality of individuals seeking advice or making reports under PIDA
- c) Manage and investigate reports of Wrongdoing in accordance with the policies and procedures of the District and the associated collective agreements where applicable; and
- d) Communicate the results of an investigation to the appropriate parties.

Disclosure: A report of Wrongdoing made under this Procedure.

Employee: A person employed by the School District.

FIPPA: *Freedom of Information and Protection of Privacy Act*.

Investigation: An investigation undertaken by the School District under this Procedure or by the Ombudsperson under PIDA.

Ombudsperson: The Ombudsperson of British Columbia.

Personal Information: This 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: The *Public Interest Disclosure Act* of British Columbia.

Reprisal: The imposition of, and any threat to impose, discipline, demotion, termination, or any other act that adversely affects employment or working conditions of an Employee because they made a Disclosure, sought advice, made a complaint about a Reprisal or participated in an Investigation.

Respondent: The individual(s) who are named within the Disclosure as being responsible for the alleged misconduct.

Urgent Risk: This arises if there is a reasonable belief that a matter constitutes an imminent risk of a substantial and specific danger to the life, health or safety of persons or 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.

### **Who May Make a Disclosure**

Any Employee may report Wrongdoing under this Procedure if the alleged Wrongdoing occurred or was discovered while the Employee was employed or engaged by the School District.

Reports received from members of the public or from Employees who were not employed by the School District at the time that the alleged Wrongdoing occurred or was discovered are outside the scope of this Procedure.

## How to Make a Disclosure

An Employee who reasonably believes that a Wrongdoing has been committed or is about to be committed may make a Disclosure to any of the following:

- a) That person's supervisor;
- b) The Superintendent;
- c) A Designate other than the Superintendent; or
- d) The Ombudsperson. [link](#)

A Disclosure should be submitted in writing using the Disclosure Form ([link](#)) or in other written form, and include the following information if known:

- a) A description of the Wrongdoing;
- b) The name of the person(s) alleged to be responsible for or to have participated in the Wrongdoing;
- c) The date or expected date of the Wrongdoing;
- d) If the Wrongdoing relates to an obligation under a statute or enactment, the name of that statute or enactment; and
- e) Whether the Wrongdoing has already been reported and, if so, to whom and a description of the response received.

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 Procedure or PIDA will not be provided to an anonymous Discloser except at the discretion of the Designate and where the Disclosure has provided contact information.

A Discloser who is considering making a Disclosure may request Advice from any of their union representative, or employee association representative, a lawyer, their supervisor, a Designate or the Ombudsperson.

A Discloser should not make a Disclosure to a person if the allegations relate, in whole or in part, to alleged Wrongdoing by that person, and any person who receives a Disclosure 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 Procedure with responsibility for receiving a Disclosure.

## How to Make a Disclosure About Urgent Risk

1. PIDA permits Employees to make public disclosures if the Employee 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 a substantial and specific danger to the life, health or safety of persons or to the environment.
2. Before making a public disclosure of an Urgent Risk the Employee must:
  - a) Consult with the relevant Protection Official (public health officer, Emergency Management BC, or police);
  - b) Receive and follow the direction of that Protection Official, including if the Protection Official directs the Employee not to make the public disclosure;

- c) Refrain from disclosing, publishing or otherwise sharing Personal Information except as necessary to address the Urgent Risk;
  - d) Refrain from disclosing any information that is privileged or subject to a restriction on disclosure under PIDA or any other enactment of British Columbia or Canada, including legal advice privilege, litigation privilege or another ground of common law privilege; and
  - e) Seek appropriate advice if uncertain about what Personal Information, privileged or other information may be disclosed as part of a public disclosure.
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 form.
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 Designate.

### **Referral to Designate**

1. Each Supervisor and any other Employee who receives a Disclosure under this Procedure must promptly refer it, including all Disclosures Forms and other materials supplied, to the appropriate Designate as follows:
- a) Unless the allegations concern alleged Wrongdoing by the Superintendent, the Disclosure shall first be referred to the Superintendent who may delegate their duties under the Procedure and this Procedure to any other Designate;
  - b) If the allegations concern alleged Wrongdoing by the Superintendent, then the Disclosure should be referred to the Office of the Ombudsperson.

### **Responsibilities of the Designate**

The Designate is responsible to:

- a) Receive and respond to any Disclosure;
- b) Receive and respond to reports made about Urgent Risks;
- c) If the Designate reasonably believes that an Urgent Risk exists, the Designate may make a report to the relevant Protection Official;
- d) Review allegations of Wrongdoing in a Disclosure and determine if they fall within the scope of PIDA or the Procedure;
- e) Refer disclosures or allegations falling outside the scope of PIDA or this Procedure to the appropriate authority or dispute resolution process, as applicable;
- f) If a Disclosure relates to Wrongdoing at another government body that is subject to PIDA, refer the Disclosure to that institution;
- g) Seek clarification of the allegations of Wrongdoing from the Discloser or referring institution as needed;
- h) If appropriate, initiate an Investigation into allegations of Wrongdoing;
- i) Assess the risk of any Reprisal to the Discloser and take appropriate action, if any, to mitigate that risk;
- j) Manage communications with the Discloser and Respondent;
- k) Notify the Discloser and the Respondent of the outcome of the Investigation; and

- l) Ensure that all Personal Information received by the School District related to the Disclosure, 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 PIDA.

### **Responsibilities of Employees**

All Employees are responsible to:

- a) Make any Disclosures in good faith and on the basis of a reasonable belief that Wrongdoing has or is expected to occur;
- b) Refrain from engaging in Reprisals and report all Reprisals in accordance with this Procedure and PIDA;
- c) Maintain the confidentiality of Personal Information received in connection with a Disclosure, request for Advice, or Investigation in accordance with this Procedure and PIDA;
- d) Provide their reasonable cooperation with Investigations by the School District or the Ombudsperson;
- e) Seek appropriate advice if uncertain about whether to make a Disclosure or a public disclosure of an Urgent Risk; and
- f) Comply with the requirements of this Procedure and PIDA concerning Urgent Risks.

### **Investigations**

1. Every person involved in receiving, reviewing and investigating Disclosures must carry out those function in an expeditious, fair and proportionate manner as appropriate in the circumstances and as required under PIDA.
2. The School District shall seek to complete all Investigations within 90 calendar days of receipt of a Disclosure, but the Designate may shorten or extend this time period depending on the nature and complexity of the allegations.
3. The Designate may expand the scope of any Investigation beyond the allegations set out in the Disclosure to ensure that any potential Wrongdoing discovered during an Investigation is investigated.
4. All Investigations shall be conducted by an internal or external investigator with sufficient qualifications and experience to carry out the Investigation, though overall responsibility and accountability for the Investigation remains with the Designate.
5. The Designate may consult with the Ombudsperson regarding a Disclosure 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.
6. The Designate may refuse to investigate or postpone or stop an Investigation if they reasonably believe that:
  - a) The Disclosure does not provide adequate particulars of the Wrongdoing;
  - b) The Disclosure is frivolous or vexatious, has not been made in good faith, has not been made by a person entitled to make a Disclosure under the Procedure or PIDA, or does not deal with Wrongdoing;

- c) 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;
  - d) The investigation of the Disclosure would serve no useful purpose because the subject matter of the Disclosure is being or has been appropriately dealt with;
  - e) The Disclosure relates solely to a public procedure decision;
  - f) The allegations are already being or have been appropriately investigated by the Ombudsperson, the School District or other appropriate authority;
  - g) The Investigation may compromise another investigation; or
  - h) PIDA otherwise requires or permits the School District to suspend or stop the Investigation.
7. Subject to the School District's obligations under, the Discloser and the Respondent(s) will be provided with a summary of the School District's findings, including:
- a) Notice of any finding of Wrongdoing;
  - b) A summary of the reasons supporting any finding of Wrongdoing;
  - c) Any recommendations to address findings of Wrongdoing.

### **Privacy and Confidentiality**

1. All Personal Information that the School District collects, uses or shares in connection with a Disclosure, 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 Procedure, the Procedures and PIDA unless otherwise permitted or required under FIPPA or other applicable laws.
2. Personal Information that is collected, used or shared by the School District in the course of receiving, responding to or investigating a Disclosure or a request for Advice Reprisal shall be limited to the Personal Information that is reasonably required for these purposes.
3. Any person who, in their capacity as an Employee, 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 Procedure or PIDA, except with the consent of the Discloser or as authorized or required by PIDA or other applicable laws.
4. The School District shall ensure there are reasonable security measures in place to protect all Personal Information that the School District collects or uses in the course of receiving or responding to a Disclosure, a request for Advice, 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 internally on a need-to-know basis.

### **Reprisals**

1. The School District will not tolerate Reprisals against Employees.
2. Any Employee who believes that 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 PIDA.
3. Any person who engages in any Reprisals shall be subject to disciplinary action up to and including, for an Employee, dismissal for cause.

## **Report of the Inquiry**

The report of the inquiry shall be shared with the Respondent in a confidential manner. The only documented copy of the complaint to be retained by the District will remain in the Superintendent's or Designate's office.

## **Potential Outcomes of the Inquiry**

The Superintendent may refer portions of the report to legal advisors or members of the Senior District Leadership Team, and may consult confidentially with others (e.g., officers of associations) to assist in the determination of the appropriate action to be taken in respect of the complaint.

In the event that the Superintendent determines that the Board will need to be informed, the Superintendent will abide by any required language contained within in the personal contract of the excluded Employee or collective agreement for unionized staff members.

## **Reporting Outcomes**

Unless precluded by FIPPA, the Superintendent will advise the Complainant, in writing, of the general nature of its decision in regard to the complaint. The Complainant shall be informed of his or her right to make use of the services of the Ombudsman's Office, if desired.

Reference: Sections 17, 18, 20, 22, 23, 65, 85 of the *School Act*  
*Public Interest Disclosure Act*  
*Employment Standards Act*  
*Freedom of Information and Protection of Privacy Act*  
*Labour Relations Code*  
Collective Agreements

Adopted: November 28, 2023