



# 401.3AP Public Interest Disclosure - Whistle Blower Protection

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## LEGAL REFERENCE:

- *Education Act* Section 52, 53, 54, 68, 196, 197, 204, 222, 225
- *Teaching Profession Act*
- *Freedom of Information and Protection of Privacy Act*, F-25
- Freedom of Information and Protection of Privacy Regulation, Alberta Regulation 186/2008
- *Public Interest Disclosure (Whistleblower Protection) Act*
- Public Interest Disclosure (Whistleblower Protection) Regulation

## CROSS REFERENCE:

- [401BP Workplace & Learning Environment](#)
  - [402BP Employee Relations](#)
  - [402.2AP BTPS Staff Code of Conduct](#)
  - [505BP Complaints about Jurisdiction Personnel](#)
  - [505.1AP Complaints about Jurisdiction Personnel](#)
  - [401.2AP Bullying/Personal/Sexual Harassment](#)
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## BACKGROUND

The Board and staff are committed to promoting ethical and accountable conduct, and recognize the importance of working to deter and detect wrongdoing within the operations of the school district, and advancing public confidence in the administration. As such, the Board is committed to maintaining a positive and supportive environment whereby employees can disclose potential wrongdoing, or seek advice about disclosing a potential wrongdoing, without fear of reprisal. Employees including the Superintendent have a duty to report wrongdoings or suspected wrongdoings to the Chief or Designated Officer.

On June 1, 2013, the Public Interest Disclosure (Whistleblower Protection) Act (“PIDA”) came into force in Alberta. 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 the administration of public entities. In accordance with Section 5(1) of PIDA the Board is required to establish and maintain written procedures for managing and investigating disclosures by employees. Those written procedures are set out herein.

## **DEFINITIONS**

**Chief Officer** - The Superintendent of the Board is designated as the “Chief Officer” for the purpose of the overall administration and reporting required under PIDA.

**Designated Officer** - The Assistant Superintendent of Human Resources is designated as the “Designated Officer” to manage and investigate disclosures under PIDA relating to human resource matters.

The Secretary Treasurer is designated as the “Designated Officer” to manage and investigate disclosures under the PIDA relating to financial matters including Fraud.

Where that matter concerns either the Assistant Superintendent of Human Resources OR the Secretary Treasurer, the Superintendent shall be the “Designated Officer” until the Superintendent delegates such responsibilities in writing.

Where the matter concerns both the Superintendent AND the Secretary Treasurer, the “Designated Officer” to manage and investigate disclosures under PIDA shall be the Board Chair until the Board Chair delegates such responsibilities in writing.

**Wrongdoing** - A wrongdoing is defined as one of the following, within or relating to the Board or its employees:

- a contravention of an Act of Alberta or Canada or the regulations made pursuant to those Acts;
- 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 including an act or omission that is deliberate and that shows a reckless or willful disregard for the proper management of
  - (i) public funds or a public asset,
  - (ii) the delivery of a public service, including the management or performance of;

- 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
- 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,
- (iii) 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.
- knowingly directing or counseling an individual to commit a wrongdoing mentioned above

**Reprisals** - A reprisal is any adverse employment action including:

- dismissal, layoff, suspension, demotion, transfer, discontinuation, or elimination of a job:
- change of job location, reduction in wages, changes in hours of work, reprimand:
- or any other measure that adversely affects the employee’s employment or working conditions, including threats to do any of the above.

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 PIDA, declined to participate in a wrongdoing or done anything in accordance with PIDA.

An employee may make a written complaint to the Public Interest Commissioner (“Commissioner”) if the employee alleges that a reprisal has been taken or directed against the employee. The written complaint must, be made on the prescribed PIDA Complaint or Reprisal Form.

No action lies against the Board or an employee of the Board for making a reasonable human resource management decision in good faith.

**PROCEDURES:**

**Disclosures of Wrongdoing**

1. Employees seeking advice on potential disclosure under PIDA and this Policy shall be referred to the Designated Officer or their supervisor, who shall provide the employee with information on PIDA, this Policy, the requirements of PIDA and this Policy, and other alternative processes for resolution of the employee’s concern.
2. An employee who reasonably believes that they have information that could show that a wrongdoing has been committed or is about to be committed, or who has been asked to commit a wrongdoing, may make a disclosure to the Designated Officer or the Commissioner.
3. At the time an employee makes a disclosure to the Designated Officer, the Employee may also make the disclosure to the Commissioner and advise the Commissioner that the disclosure has been made to the employee’s Designated Officer. Further information can be obtained by visiting the Commissioners website at [www.yourvoiceprotected.ca](http://www.yourvoiceprotected.ca).

4. In the event that disclosure to the Designated Officer is not appropriate due to a conflict of interest with respect to the nature of the disclosure or the person involved, the Designated Officer shall refer the matter to the Chief Officer.
5. In the event of a disclosure to the Designated Officer concerning the conduct of the Chief Officer (Superintendent), or concerning where the Chief Officer has a conflict of interest, the Designated Officer shall:
  - 5.1 should the complaint be against the Superintendent; the matter shall be referred to the Secretary Treasurer to investigate on behalf of the Board of Trustees;
  - 5.2 the Secretary Treasurer shall advise the Board Chair of such disclosures immediately, and will communicate with the Board of Trustees as possible and reasonable under legal advice;
  - 5.3 the Secretary Treasurer shall advise the Commissioner of the disclosure and its referral to the Board and seek advice from the Commissioner concerning whether the disclosure should be referred to the Commissioner.
6. In the event the disclosure relates to both the Superintendent AND the Secretary Treasurer:
  - 6.1 the Board Chair shall receive the complaint;
  - 6.2 advise the Commissioner of the disclosure and seek advice from the Commissioner concerning whether the disclosure should be referred to the Commissioner, and
  - 6.3 communicate with the Board of Trustees as possible and reasonable under legal advice.
7. 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 shall as soon as reasonably practicable refer the disclosure to the Commissioner.
8. Notwithstanding whether a disclosure is referred to the Commissioner, where the Designated Officer is aware of:
  - 8.1 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
  - 8.2 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 Board have sufficient information to abate that risk.
9. 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 the teacher, the Designated Officer shall advise the Superintendent of the alleged wrongdoing for consideration of a possible administrative suspension under section 105(2) of the School Act.
10. Where in the course of an investigation, the Designated Officer has reason to believe that an offense 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 offense to the appropriate law enforcement authorities.
11. If more than one disclosure of wrongdoing is received by the Designated Officer in respect to the same matter, a single investigation may be conducted into the wrongdoing.
12. 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.
13. Anonymous disclosures will be dealt with in accordance with the provisions of this procedure.

### **Investigations**

1. The designated officer may request advice from the Commissioner with respect to the management and investigation of a disclosure.
2. Upon receiving a disclosure, the Designated Officer shall make a decision whether to investigate.
3. 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.
4. Should the subject matter of the disclosure be more appropriately dealt with according to another policy or procedure of the Board, another Act, or regulation, or procedures under a collective agreement or employment contract, the Designated Officer may decline to investigate under the parameters of this policy.
5. The Designated Officer may utilize both internal personnel and external resources, for the purpose of conducting the investigation.
6. The Designated officer, and any person conducting an investigation on their behalf, may interview any person and shall have access to any document of the Board necessary for the investigation.
7. 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:
  - 7.1 as necessary for this policy and to conduct the investigation in accordance with the principles of procedural fairness and natural justice;
  - 7.2 in accordance with PIDA or any other statute;
  - 7.3 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.
8. Investigations shall be conducted in accordance with the principles of procedural fairness and natural justice
9. The Designated Officer may decline to investigate where the disclosure:
  - 9.1 is clearly frivolous or vexatious, 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;
  - 9.2 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
  - 9.3 does not provide adequate particulars about the wrongdoing to permit the conduct of a fair and effective investigation.
10. The Designated Officer is not required to investigate a disclosure or, if an investigation has been initiated, may discontinue the investigation if more than 2 years has passed since the date that the wrongdoing was discovered.

## **Timelines**

1. The Designated Officer shall acknowledge receipt of the disclosure or complaint of reprisal to the employee making the disclosure or complaint within five (5) business days from receipt of the disclosure or complaint. An employee who submitted a disclosure of wrongdoing or complaint of reprisal shall be advised, no more than 10 business days from the date on which the disclosure of wrongdoing or complaint of reprisal is received, whether an investigation will be undertaken.
2. The investigation must be concluded and the investigation report provided to the Chief Officer not more than 110 business days from the date on which the disclosure of wrongdoing or complaint of reprisal was received.
3. These timelines may be extended by the Chief Officer provided that the total extensions granted do not exceed the overall time period for investigation and provision of the investigation report by more than 30 business days, or for a longer period of time if permitted by the Commissioner.

## **Report**

1. The Designated Officer shall provide a written investigation report to the Chief Officer detailing whether the disclosure was substantiated, and provide recommendations on corrective action.
2. 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 School 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 School Act for the Superintendent to consider that recommendation.
3. 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 taken. The Chief Officer shall follow up with the employees responsible to ensure those actions are taken.
4. The person making the complaint shall 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.
5. The Chief or Designated Officers are required to report matters of imminent risk to the life, health or safety of individuals or the environment, to:
  - 5.1 an appropriate law enforcement agency;
  - 5.2 in the case of a health-related matter, to the Chief Medical Officer of Health;
  - 5.3 to the department, public entity, or office responsible for managing, controlling, or containing the risk, if any; and
  - 5.4 to a person identified in the procedures created by the Chief Officer.

An investigation into the matter of imminent risk shall be suspended until it has been finally

- disposed of by a law enforcement agency or the Minister of Justice and Solicitor General.
6. In circumstances where the Chief or Designated Officer has reason to believe that an offence has been committed under a statute or regulation, the offence shall be reported to a law enforcement agency and to the Minister of Justice and Solicitor General as soon as reasonably practicable. An investigation into a matter of criminal offence shall be suspended until it has been finally disposed of by a law enforcement agency or the Minister of Justice and Solicitor General.

### **Good Faith**

1. An employee who submits a disclosure of wrongdoing or complaint of reprisal must act in good faith. Good faith describes that state of mind denoting honesty of purpose, being faithful to one's duty or obligation, or an honest intention to abstain from taking any advantage of another.
2. An employee who knowingly makes deliberately false and/or malicious allegations of wrongdoing may be subject to disciplinary action up to and including termination of employment.

### **Annual Reporting**

1. The Chief Officer will prepare an annual report on all disclosures that have been made or referred to the designated officer. This report will be posted annually on the District web site by January 30th of each year. The annual report will include the following information:
  - 1.1 the number of disclosures received or referred by the designated officer;
  - 1.2 the number of disclosures acted on; and
  - 1.3 the number of disclosures not acted on by the designated officer;
  - 1.4 the number of disclosures commenced by the designated officer as a result of disclosures;
  - 1.5 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.

### **Policy Communication**

1. The Chief Officer will ensure that this policy is reviewed with all employees and made accessible to them prior to the start of each school year.