

PUBLIC INTEREST DISCLOSURE (*Whistleblower Protection*) ACT

Background

A commitment to the value of stewardship within Medicine Hat Catholic Board of Education is the promise that we respect and protect God's creation; we ensure that our resources and efforts best serve the needs of all our students; we are accountable to our supporters and will operate in a fiscally responsible manner; we ensure that decisions are both fact and policy driven; we support and provide processes which promote fair and objective decision-making through a Catholic perspective; and we are open and transparent.

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 or relating to public bodies, 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
- Promote public confidence in the administration of public bodies.

The Board of Trustees for the Medicine Hat Catholic Board of Education is committed to the highest ethical and accountable conduct, and recognizes the importance of working to deter and detect wrongdoing within the operation of the school division, and to promote public confidence in the administration of the Board. 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. All employees have a duty to report all wrongdoings or suspected wrongdoings to the Chief Officer or Designate.

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.



The Board of Trustees is required under Section 5(1) of PIDA to establish and maintain, in accordance with PIDA, written practices for managing and investigating disclosures by employees of the Board.

Definitions:

- “PIDA” means *the Public Interest Disclosure (Whistleblower Protection) Act*
- “chief officer” means the superintendent of schools;
- “designated officer” means 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 [policy/procedure];
- “wrongdoing” means:
 - (a) 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,
 - (b) 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,
 - (c) gross mismanagement of public funds or a public asset, and
 - (d) knowingly directing or counseling 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 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.



Procedures

1. DESIGNATION OF CHIEF OFFICER

- a. The Superintendent of Schools is designated the Chief Officer for the purpose of the overall administration and reporting required under PIDA.

2. DESIGNATION OF DESIGNATED OFFICER

- a. The Deputy Superintendent is designated the Designated Officer for the purpose of administering and investigating disclosures under PIDA.

3. WHAT THIS POLICY APPLIES TO

- a. This policy applies to wrongdoings in or relating to Medicine Hat Catholic Board of Education, its schools, departments and employees that involve:
 - i. a contravention of an Act of Alberta or Canada or the Regulations related to those acts, or
 - ii. an act or omission that creates:
 1. 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
 2. A substantial and specific danger to the environment, or
 - iii. Gross mismanagement of public funds or a public asset, or
 - iv. Knowingly directing or counseling an individual to commit one of the wrongdoings listed above.
- b. Wrongdoings as it relates to PIDA are only those occurring after June 1, 2013.

4. NO REPRISALS

- a. 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:
 - i. A dismissal, layoff, suspension, demotion or transfer, discontinuation or elimination of a job, change of job location, reduction of wages, changes in hours of work or reprimand;
 - ii. Any measure, other than one mentioned in clause (i) that adversely affects the employee's employment or working conditions;
 - iii. A threat to take any of the measures mentioned in clause (i) or (ii)
- b. Complaints of reprisals
 - i. Subject to the below, an employee may make a written complaint to the Commissioner if the employee alleges that a reprisal has been taken or directed against the employee.
 - ii. An employee of the office of the Public Interest Commissioner, and if the legislative assembly appoints the Ombudsman as the Commissioner pursuant to section 38(2) of PIDA, an employee of the Office of the Ombudsman, may make a written complaint to the Auditor General if the employee alleges that a reprisal has been taken or directed against the employee



iii. A complaint of reprisal to the Commissioner must be in the prescribed form <http://www.pic.alberta.ca/files/Complaint-of-Reprisal-Form.pdf>)

c. Reasonable human resource management decisions made in good faith do not constitute a reprisal.

5. DISCLOSURE

a. Employees seeking advice on potential disclosure under PIDA and this policy shall be referred to the designated officer, chief officer or the Commissioner who shall provide the employee with information on PIDA, this procedure, the requirements of PIDA and this procedure, and other alternative processes for resolution of the employee's concern.

b. Disclosures of wrongdoing for the purpose of PIDA must be made to the **Designated Officer** in writing. The form **Public Interest Disclosure Form** outlines the information required in a disclosure.

c. Disclosures shall provide:

- i. the name of the disclosing employee;
- ii. a description of the wrongdoing;
- iii. the name of the individual or individuals alleged:
 1. to have committed the wrongdoing, or
 2. to be about to commit the wrongdoing;
- iv. the date of the wrongdoing

v. Other information the the designated officer may reasonably require

vi. Other information as prescribed by regulations

d. The designated officer shall acknowledge receipt of the disclosure to the employee making the disclosure within 5 business days from receipt of the disclosure.

6. PRELIMINARY HANDLING OF DISCLOSURES

a. Where the designated officer is of the opinion that the subject matter of a disclosure would be more appropriately be 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.

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

- i. another policy/procedure of the board (for example, AP 170 Discrimination and Harassment);
- ii. another Act or regulation (for example, human rights or occupational health and safety legislation), or
- iii. procedures under a collective agreement or employment contract,



- c. and the designated officer is of the opinion that the subject matter of the disclosure would be more appropriately be dealt with under that alternative process, the designated officer may refer the disclosing employee to those procedures
- d. Where the disclosure:
 - 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. 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
 - 3. does not provide adequate particulars about the wrongdoing to permit the conduct of a fair and effective investigation
- ii. the designated officer may decline to investigate the disclosure.
- e. If more than one disclosure is made of a single wrongdoing, the designated officer may conduct a single investigation into the wrongdoing.
- f. 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
- g. Anonymous disclosures may be dealt with, but an investigation may be hampered by the request for anonymity.

7. CONFLICTS OF INTEREST / DISCLOSURES ABOUT THE CHIEF OFFICER OR DESIGNATED OFFICER

- a. In the event that disclosure to the **Designated Officer** is not appropriate due to conflict of interest with respect to the nature of the disclosure or the person involved, 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.
- b. 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:
 - i. advise the Board Chair of the nature of the disclosure, whereupon the Board of Trustees may authorize an investigation into the disclosure; and
 - ii. 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.

- iii. In the event that the wrongdoing disclosure is in relation to the designated officer, then the employee shall report the wrongdoing to the chief officer using the required form.

8. MANDATORY DISCLOSURES TO OTHERS

- a. 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.
- b. Notwithstanding whether a disclosure is referred to the Commissioner, where the designated officer is aware of:
 - i. of 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
 - ii. that the alleged wrongdoing, if true, may threaten the welfare of students, staff, or the safe and caring environment of the school,
 - iii. the designated officer shall also ensure that appropriate persons within the school board have sufficient information to act to abate that risk.
 - iv. 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.
 - v. 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 shall report the potential offence to the appropriate law enforcement authorities.

9. INVESTIGATIONS

- a. The designated officer shall conduct all investigations in accordance with the principals of natural justice and procedural fairness. For example, the alleged wrongdoer has the right to know the nature of the disclosure, receive relevant information as required, and to be given an opportunity to reply to the disclosure. Information that is to be disclosed shall be limited to that which is



required to be disclosed in accordance with the principles of procedural fairness and natural justice

- b. The designated officer may utilize internal personnel and resources, and may retain outside personnel or resources as appropriate, for the purpose of conducting the investigation. The responsibility may not be delegated. The designated officer may:
 - i. Consult with the chief officer regarding the management and investigation of a disclosure;
 - ii. Request advice from the Commissioner with respect to the management and investigation of a disclosure.
- c. If specialized expertise is retained by the designated officer to assist in the investigation (e.g., lawyers, specialized investigators, forensic auditors), care must be taken to handle all correspondence to or from any expert, including billings for these services, with due regard to confidentiality requirements and protection of identity under PIDA
- d. 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.
- e. Subject to the principles of procedural fairness and natural justice, the designated officer must ensure the confidentiality of the information collected and must protect the identity of the persons involved in the disclosure process, including the disclosing employee, any witnesses and the alleged wrongdoer, to the fullest extent possible. Identifying information of anyone involved shall not be disclosed unless it is necessary to conduct the investigation or required by principles of procedural fairness and natural justice.
- f. 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.
- g. The designated officer shall create separate and unique electronic or paper record (ie. a log) to track disclosures and/or requests for advice under PIDA, and take reasonable care to handle the record with due regard to confidentiality requirements and protection of identity under PIDA. All pertinent information obtained verbally must be documented in writing, dated, and placed in the disclosure file. All documentation related to the investigation, including interview notes, must be included in the disclosure file.
- h. The record must be treated as strictly confidential, maintained in a secure manner and location and protected from unauthorized access (s. 5(2)g).



- i. The designated officer may assign unique identifiers or codes to files or employ other administrative tools to help maintain confidentiality.
- j. Investigations must be concluded within 110 business days from the date the disclosure was received, subject to an extension to the time limit as detailed in section 11 below.

10. REPORTING

- a. The designated officer shall provide a written investigation report to the chief officer detailing The designated officer's findings or reasons for those findings, whether the disclosure was substantiated, and providing any recommendations on corrective action respecting the disclosure and wrongdoing.
- b. 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.
- c. 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 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.
- d. 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 and notify the designated officer of the steps taken to give effect to the recommendations.
- e. 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.

11. EXTENSIONS OF TIMELINES

- a. The designated officer may request of the chief officer, and the chief officer 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 30 business days.
- b. The chief officer may request permission from the Commissioner to extend timelines for a longer period.



- c. 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.

12. CONFIDENTIALITY

- a. 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:
 - i. as necessary for this [policy/procedure] and to conduct the investigation in accordance with the principles of procedural fairness and natural justice;
 - ii. in accordance with PIDA or any other statute;
 - iii. 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.

