

## 414 DUTY TO REPORT

### Belief

MESC is committed to the highest standard of ethical and accountable conduct, and recognizes the importance of working to deter and detect wrongdoing within MESC operations, and to promote public confidence in MESC administration. MESC employees are encouraged to act in ways consistent with the teachings of Iyiniw Mamtoheicikan and Nehiyaw Pimatisiwin. To ensure this, the MESC 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. Employees have a duty to report all wrongdoings or suspected wrongdoings to the Superintendent in accordance with this Administrative Procedure.

The Purpose of the *Public Interest Disclosure (Whistleblower Protection) Act* (“PIDA”) is to:

- 1.1.1.1. 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.
- 1.1.1.1.2. protect employees who make those disclosures.
- 1.1.1.1.3. manage, investigate and make recommendations respecting disclosures of wrongdoings and reprisals.
- 1.1.1.1.4. promote public confidence in the administration of public entities.

Under PIDA, an employee may make a disclosure of a wrongdoing, which the Superintendent 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.

### Purpose

The MESC 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 school board. Those written procedures are set out herein.

### Definitions

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

*Chief Officer* means the Superintendent.

*Designated Officer* means the individual designated by the Chief Officer to manage and investigate disclosures under PIDA, and for the purpose of this Administrative Procedure specifically means the Superintendent.

Commissioner means the Public Interest Commissioner appointed under PIDA.

Employee means an individual employed by the MESCS.

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

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, reduction in wages, change in hours of work or reprimand, or any other measure that adversely affects the employee's employment or working conditions (i.e. bullying), and threats to do any of the above.

Wrongdoing means:

1. contravention of an Act, a regulation made pursuant to an Act, and 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:
  - 2.1. 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.
  - 2.2. a substantial and specific danger to the environment.
  - 2.3. gross mismanagement of public funds or a public asset.
  - 2.4. knowingly directing or counselling an individual to commit a wrongdoing mentioned above.

## **Procedures**

### **1. Role of the Chief Officer**

- 1.1. The Superintendent is the Chief Officer for the purpose of the overall administration and reporting required under PIDA.
- 1.2. The Chief Officer must, in accordance with PIDA:
  - 1.2.1. Establish and maintain written procedures for managing and investigating disclosures in accordance with PIDA.
  - 1.2.2. Appoint a Designated Officer to manage and investigate disclosures under PIDA.
  - 1.2.3. Ensure employees are aware of the internal disclosure procedure and the whistleblower protections of PIDA and this Administrative Procedure.
  - 1.2.4. Receive recommendations and reports resulting from investigations.
  - 1.2.5. Fulfill annual reporting requirements in accordance with PIDA.

### **2. Role of the Designated Officer**

- 2.1. The Superintendent or designate shall be the "Designated Officer" to manage and investigate disclosure in accordance with PIDA.

2.2. The Designated Officer is responsible for:

- 2.2.1. Providing general advice and guidance about the operation of PIDA and this Administrative Procedure.
- 2.2.2. Receiving and processing disclosures by employees of suspected wrongdoings.
- 2.2.3. Assessing disclosures of suspected wrongdoings and determining if there are sufficient grounds to warrant further action.
- 2.2.4. If the Designated Officer is not the Superintendent then , determining what actions must be taken to address the suspected wrongdoings, including consulting with the Superintendent regarding the management and investigation of a disclosure, where necessary.
- 2.2.5. Providing an investigation report to the Superintendent.
- 2.2.6. Referring a disclosure to a public entity or office of the Legislature if the disclosure would more appropriately be dealt with there.
- 2.2.7. Keeping records of all disclosures, including:
  - 2.2.7.1. the number of disclosures received annually.
  - 2.2.7.2. the number of disclosures acted on and not acted on.
  - 2.2.7.3. the number of investigations commenced as a result of disclosures.
  - 2.2.7.4. 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.
- 2.2.8. Implementing measures to protect employees who disclose suspected wrongdoing in good faith from reprisals.
- 2.2.9. Implementing measures to protect employees, who are witnesses or provide information in relation to a disclosure of suspected wrongdoing from reprisals.
- 2.2.10. Making recommendations to the Superintendent for consequences if a disclosure of suspected wrongdoing is made maliciously or in bad faith.

3. Receipt of Disclosures

- 3.1. Employees seeking advice on potential disclosure under PIDA and this Administrative Procedure shall be referred to the Designated Officer, who shall provide the employee with information on PIDA, this Administrative Procedure, the requirements of PIDA and this Administrative Procedure, and other alternative processes for resolution of the employee's concern.
- 3.2. An employee who, in good faith reasonably believes 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.
- 3.3. Employees making disclosures for the purposes of PIDA and this Administrative Procedure to the Designated Officer, shall utilize the PIDA Disclosure of Wrongdoing Form.
- 3.4. Disclosures shall provide:

- 3.4.1. the name of the disclosing employee.
- 3.4.2. a description of the wrongdoing.
- 3.4.3. the name of the individual(s) alleged:
- 3.4.4. to have committed the wrongdoing.
- 3.4.5. to be about to commit the wrongdoing.
- 3.4.6. the date(s) of the alleged wrongdoing.
- 3.4.7. the Designated Officer shall acknowledge receipt of the disclosure to the employee making the disclosure within 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 shall 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/procedure of the Board, another Act or regulation (for example, human rights or occupational health and safety legislation) or
  - 4.2.2. procedures under an employment contract (i.e. grievance procedures); 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/alternative processes.
- 4.3. Where the disclosure:
  - 4.3.1. is clearly frivolous or vexatious, has not been made in good faith, had 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;
  - 4.3.4. 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. Within ten (10) business days from receipt of the disclosure, the Designated Officer shall advise the employee making the disclosure whether the disclosure will or will not be investigated.

#### 5. Reporting to the Office of the Commissioner

- 5.1. An employee may make a disclosure directly to the Commissioner and circumvent their Chief Officer and Designated Officer if:

- 5.1.1. The disclosure has been made and not resolved within the specified time periods or in accordance with these procedures.
  - 5.1.2. The employee has made a disclosure in accordance with this Administrative Procedure, the investigation has been completed, a final decision has been issued in respect of the disclosure and the employee is dissatisfied with the decision.
  - 5.1.3. The subject matter of the disclosure involves the employee's Chief Officer or the employee's Designated Officer.
  - 5.1.4. The employee reasonably believes that a matter constitutes an imminent risk of a substantial and specific danger to the life, health or safety of individuals, or to the environment, such that there is insufficient time to make a disclosure to the Designated Officer.
6. Mandatory Disclosures to Others
  - 6.1. Notwithstanding whether a disclosure is referred to the Commissioner, where the Designated Officer is aware:
    - 6.1.1. 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
    - 6.1.2. that the alleged wrongdoing, if true, may threaten the welfare of students, employees, or the safe and caring environment of the school;
    - 6.1.3. the Designated Officer shall also ensure that appropriate persons within MESC have sufficient information to act to abate that risk.
  - 6.2. 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/instructor, the Designated Officer shall advise the Superintendent of
    - 6.2.1. the alleged wrongdoing for consideration of a possible administrative suspension.
  - 6.3. 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.
7. Investigations
  - 7.1. The Designated Officer shall conduct all investigations in accordance with the principles of natural justice and procedural fairness.
  - 7.2. The Designated Officer may utilize internal personnel and resources, and may retain outside personnel or resources, for the purpose of conducting an investigation.
  - 7.3. All employees shall cooperate fully with the Designated Officer or any outside personnel retained for the purpose of conducting an investigation.

7.4. The Designated Officer, and any person conducting an investigation on their behalf, may interview any person and shall have access to any documents of MESC necessary to manage and investigate disclosure under PIDA.

7.5. 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.

## 8. Reporting

8.1. 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.

8.2. Where the Designated Officer is considering a recommendation to the Superintendent that the Superintendent exercise authority delegated to him/her by the Board to suspend a teacher/instructor or administrative designation under the *School Act*, the Designated Officer shall consult with the other MESC employees 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.

8.3. The Chief Officer shall consider the recommendation 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. The Chief Officer shall follow up with the employees responsible to ensure those actions are taken.

8.4. 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.

## 9. Extensions of Timelines

9.1. The Designated Officer may request extensions of timelines within this 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.

9.2. 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.

## 10. Conflict of Interest/Disclosures About the Chief Officer

10.1. 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 Superintendent 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.

10.2. 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 shall:

10.2.1. Advise the Board Chair of the nature of the disclosure, whereupon the Board of MESC may authorize an investigation into the disclosure.

## 11. Confidentiality

11.1. 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:

11.1.1. As necessary for this Administrative Procedure and to conduct the investigation in accordance with the principles of procedural fairness and natural justice.

11.1.2. In accordance with PIDA or any other statute.

11.1.3. 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.

## 12. No Reprisal

12.1. No person will engage in reprisal against an individual for:

12.1.1. Seeking advice about making a disclosure.

12.1.2. Making a disclosure.

12.1.3. Co-operating with an investigation under this Administrative Procedure.

12.1.4. Declining to participate in a wrongdoing.

12.2. All complaints of reprisals will be managed and investigated by the Commissioner.

## 13. False Accusations/Vexatious Reporting

13.1. Any individual who intentionally makes a false, bad faith or vexatious report of a wrongdoing will be subject to disciplinary action, up to and including termination of employment.

### Reference:

- *Public Interest Disclosure (Whistleblower Protection) Act*