

Administrative Procedure 403

SAFE DISCLOSURE

Background

The Division is committed to the highest standards of legal, fiscal, ethical and accountable conduct. The Division maintains those standards by encouraging employees to seek out advice and if necessary, to report wrongdoing. The Division will take appropriate action to investigate such reports and protect employees from reprisal for making such reports.

With these commitments in mind, the Division has developed an Administrative Procedure by which these commitments will be implemented, in accordance with the *Public Interest Disclosure (Whistleblower Protection) Act* (the “Whistleblower Act”) came into force on June 1, 2013. The purpose of the Whistleblower Act and the Division’s framework are to:

- Facilitate the disclosure and investigation of significant and serious matters in the Division 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 disclosure of wrongdoings and reprisals; and
- Promote public confidence in the administration of the Division.

In addition to the option of reporting matters to the Division in accordance with this Administrative Procedure, individuals may also choose to disclose directly to the Public Interest Commissioner. A disclosure to the Commissioner can be made in conjunction with a disclosure to the Division or independently. More information about the Public Interest Commissioner can be found at <https://yourvoiceprotected.ca/>.

Any of the steps outlined in this Administrative Procedure do not supersede in any way any other existing Division policies, procedures or processes related to other violations that are not wrongdoings under the Whistleblower Act.

Procedures

1. Reportable matters

1.1 Matters that can be brought forward for investigation are as follows:

1.1.1 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;

1.1.2 An act or omission that creates:

- 1.1.2.1. 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;
 - 1.1.2.2. A substantial and specific danger to the environment;
 - 1.1.3 Gross mismanagement of public funds or a public asset; or
 - 1.1.4 Knowingly directing or counselling an individual to commit a wrongdoing mentioned in clauses 1.1.1, 1.1.2 and 1.1.3.
2. Chief Officer and Designated Officer
 - 2.1 Pursuant to the Whistleblower Regulation, the Chief Superintendent is designated as Chief Officer for the purposes of any matter brought forward pursuant to this Administrative Procedure.
 - 2.2 The Chief Superintendent appoints the Division's General Counsel to act as the Designated Officer and be responsible for the management and investigation of any disclosures made pursuant to the Whistleblower Act and this Administrative Procedure.
 - 2.3 The Designated Officer may delegate tasks required to be performed pursuant to this Administrative Procedure, but shall retain overall management and investigatory responsibility for any such matter except in circumstances in which the Chief Officer has determined that it is inappropriate for the Designated Officer to perform those roles in relation to a disclosure. In those cases, the Chief Officer must assume management and investigatory responsibility and may delegate tasks as the Chief Officer sees fit.
 - 2.4 The Chief Superintendent may refer any disclosure directly to the Public Interest Commissioner for investigation.
3. Advice and Information
 - 3.1 Any employee who is considering making a disclosure may, prior to submitting a disclosure, request information or advice from the Designated Officer, Chief Officer or the Public Interest Commissioner with respect to the alleged wrongdoing. The Designated Officer or Chief Officer may, in their discretion, require that such requests for information or advice be made in writing.
4. Making a Disclosure to the Designated Officer
 - 4.1 Disclosures to the Designated Officer shall be sent to designatedofficer@ecsd.net or to the following address:

Catholic Education Services
Attention: General Counsel
9807 - 106 Street
Edmonton, AB T5K 1C2

5. Direct Disclosure to the Public Interest Commissioner

5.1 The following disclosures may be made directly to the Public Interest Commissioner:

- 5.1.1 If an employee has made a disclosure in accordance with this Administrative Procedure and an investigation in respect of the disclosure has not been completed in accordance with this Administrative Procedure;
- 5.1.2 If an employee has made a disclosure in accordance with this Administrative Procedure and the matter has not been resolved within the time periods established under this Administrative Procedure;
- 5.1.3 If an employee has made a disclosure in accordance with this Administrative Procedure, the investigation under this Administrative Procedure has been completed, a final decision has been issued in respect of the disclosure and the employee is dissatisfied with the decision;
- 5.1.4 If the subject-matter of the disclosure involves the Chief Officer or the Designated Officer;
- 5.1.5 If 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 pursuant to this Administrative Procedure;
- 5.1.6 If an employee has made a disclosure in accordance with this Administrative Procedure and is unable to complete the process set out in this Administrative Procedure because a reprisal has been taken or directed against the employee;
- 5.1.7 If an employee reasonably believes that a reprisal is likely to be taken or directed against the employee if the disclosure is made in accordance with this Administrative Procedure; or
- 5.1.8 In the circumstances prescribed in the *Public Interest Disclosure (Whistleblower Protection) Regulation* A.R. 71/2013, as amended from time to time.

5.2 The Public Interest Commissioner may be reached at:

Head office and mailing address:
Public Interest Commissioner
9925 - 109 Street N.W., Suite 700
Edmonton, AB T5K 2J8

Phone: (780) 641-8659
<https://yourvoiceprotected.ca/>

6. Anonymous Disclosures

- 6.1 If an anonymous disclosure is made, the Designated Officer will attempt to investigate in the same manner as if the disclosure had not been made anonymously, and will have the same obligations of confidentiality regarding the investigation. However, it is inevitable that the investigation may be hampered by a lack of detail and the potential

inability of the investigator to seek further information from the person making the disclosure. No information about an investigation will be given to an anonymous discloser.

7. Disclosures Made to Other Officials

- 7.1 If a disclosure is received by any employee other than the Chief Officer or Designated Officer, the employee must immediately forward the disclosure to the Designated Officer.

8. Content and Form of Disclosures

- 8.1 All disclosures must be made in writing. The following information must be provided prior to the Designated Officer commencing an investigation:
 - 8.1.1 Details about the wrongdoing, including whether it has already been committed or is about to be committed;
 - 8.1.2 Name(s) of the person(s) involved in the wrongdoing;
 - 8.1.3 If the wrongdoing has already been committed, the date it was committed (or approximate if the actual date is not known);
 - 8.1.4 Any evidence or documentation supporting the alleged wrongdoing;
 - 8.1.5 Information regarding whether a disclosure in respect of the same wrongdoing has previously been made pursuant to this regulation or to any other party. If such a disclosure has been made, then the person making the disclosure must also indicate whether a response to the disclosure has been received, and if so, must provide a copy of the response.
- 8.2 In addition to the information listed above, the person making the disclosure must provide any additional information that the Designated Officer (or designate) may reasonably require in order to investigate the matters set out in the disclosure.

9. Acknowledging Receipt of a Disclosure

- 9.1 The Designated Officer will provide a written receipt of a disclosure as soon as is practicable, but in any event not more than five (5) business days following the date of receipt of the disclosure, except where the disclosure is made anonymously.

10. Reporting Receipt of a Disclosure to the Chief Officer

- 10.1 When the Designated Officer receives a disclosure, the Designated Officer will as soon as practicable but in any event not more than five business days following the date of receipt of the disclosure, advise the Chief Officer of the fact and nature of the disclosure, together with any other information the Chief Officer may require.

11. Initial Review

- 11.1 After acknowledging receipt and advising the Chief Officer of a disclosure, the Designated Officer will review the disclosure to determine whether it meets the content requirements of this regulation, and whether it is the kind of disclosure contemplated by

section 3 of the Whistleblower Act. If the content requirement is not met, the Designated Officer will request whatever information is lacking. If the person making the disclosure does not comply, the Designated Officer will determine whether further steps will be taken or not. If the disclosure is not the type contemplated by section 3 of the Whistleblower Act, the Designated Officer will determine whether the disclosure is to be dealt with pursuant to other Division policy or procedures, referred to some other agency, or not pursued.

11.2 If the Designated Officer decides that a disclosure is to be referred to the Public Interest Commissioner or another department, public entity or office of the Legislature, the Designated Officer will make the referral not more than ten (10) business days following original receipt of the disclosure. The employee or other person making the disclosure will be advised by the Designated Officer about the referral.

11.3 The Designated Officer may request advice from the Public Interest Commissioner with respect to the management and investigation of a disclosure.

12. Preliminary Investigation

12.1 If the Designated Officer has determined that further steps are to be taken under this Administrative Procedure, the Designated Officer will advise the Chief Officer and the person who made the disclosure that a preliminary investigation will be conducted to determine whether a formal investigation should be made.

12.2 A preliminary investigation must be completed not more than ten (10) business days following receipt of the disclosure.

12.3 The Designated Officer will direct that a disclosure not be formally investigated if the Designated Officer determines that the disclosure:

12.3.1 Is not credible on its face, or is frivolous or vexatious;

12.3.2 Resolution of the disclosure can more appropriately be effected through mediation or other informal resolution;

12.3.3 Is to be dealt with pursuant to another Division policy or procedure;

12.3.4 Is to be referred to the Public Interest Commissioner because 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 the environment;

12.3.5 Is to be reported to another public entity, including law or regulatory enforcement agencies, because the Designated Officer has reason to believe that an offence has been committed under an Act or regulation of the Province of Alberta or Canada;

12.3.6 Is about a matter that occurred more than two years before the disclosure was made, unless in all the circumstances the Designated Officer determines that a formal investigation ought to be conducted despite the breach of the two-year time limit;

12.3.7 Is not the type of wrongdoing contemplated in section 3 of the Whistleblower Act;
or

12.3.8 Has already been or is in the process of being investigated under the Whistleblower Act, this Administrative Procedure, a collective agreement or any other Division policy or procedure which would deal comprehensively with the wrongdoing alleged in the disclosure.

12.4 The Designated Officer will conclude the preliminary investigation by:

12.4.1 Advising, within ten (10) business days following receipt of the disclosure, the person who reported the wrongdoing that a formal investigation will proceed or not; and

12.4.2 Documenting the reasons for the decision.

13. Investigation

13.1 If more than one disclosure is made with respect to the same issue(s), the Designated Officer may decide to address all of the disclosures in one investigation.

13.2 All aspects of a disclosure will also be assessed for the level of reprisal risk and will be monitored throughout the process. In determining the reprisal risk, the Designated Officer will consider each situation individually.

13.3 The Designated Officer will determine the process of an investigation and whether to conduct the investigation internally, to utilize an external investigator(s) or a combination thereof. In making this determination, the Designated Officer will consider all relevant factors, including but not limited to the following:

13.3.1 The nature of the matters to be investigated;

13.3.2 Logistical considerations such as the availability of an investigation team free of any conflicts of interest or real or perceived bias, investigative competence in light of the nature of the matters to be investigated, and the ability to maintain the obligations of confidentiality; and

13.3.3 The ability to maintain, throughout the investigation, both real and perceived procedural fairness and natural justice.

13.4 Nothing herein is intended to restrict the Designated Officer and the Division from taking immediate steps to contain or prevent further wrongdoing. If immediate steps are taken to contain or prevent further wrongdoing, the investigation into the matter will still be completed in accordance with this regulation.

14. Confidentiality

14.1 The Chief Officer and Designated Officer are authorized to, directly or indirectly, collect, use and disclose personal information, individually identifying health information and any other information that is considered necessary to manage and investigate disclosures. Every person involved with an investigation of wrongdoing will be advised of their obligations regarding confidentiality and will make every effort to maintain confidentiality of information and identity. This includes but is not limited to:

14.1.1 Ensuring that information about disclosures, wrongdoing, and investigations is shared only on a “need-to-know” basis;

14.1.2 Ensuring that employees are informed that they cannot share information about disclosures or wrongdoing with other employees or persons external to the Division, except for those who need to know the information. This includes information regarding the identity of those who make a disclosure, those alleged to have committed a wrongdoing and witnesses as well as information collected and the results of an investigation.

14.2 Notwithstanding these obligations of confidentiality, the Chief Officer and Designated Officer may inform the Board, senior officials, legal counsel, auditors, occupational health and safety officers, and law enforcement agencies about a wrongdoing and/or an investigation at any time.

14.3 Any obligation to maintain information as confidential will not apply when there is an imminent risk of a substantial and specific danger to the life, health or safety of individuals, or to the environment.

15. Procedures for Handling Information

15.1 The Designated Officer must maintain strict measures to ensure that the following are protected against improper disclosure or unauthorized access:

15.1.1 The identity of complainants, witnesses, and alleged wrongdoers;

15.1.2 The fact that an investigation is taking place;

15.1.3 Details regarding investigations; and

15.1.4 Details regarding any attempted or actual reprisals.

15.2 This burden will be heightened when there is any perceived risk to the discloser, and may result in the Designated Officer placing even stricter measures in place as the Designated Officer deems appropriate to the circumstances.

15.3 All written details relating to disclosures, investigations and reprisals must be included in a confidential file maintained on paper and digitally by the Designated Officer. Information obtained verbally must be documented in writing, dated, and added to the confidential file.

16. Matters of Urgency

16.1 Matters will require immediate attention if they could pose an imminent risk of a substantial or specific danger to a person’s health or safety, or to the environment. Employees who disclose wrongdoing on matters that involve such a risk are required to disclose directly to the Public Interest Commissioner. The Public Interest Commissioner will then liaise with the appropriate law enforcement or public health authorities and, upon their advice, will communicate the information to the public where necessary. The person making the disclosure is still required, as soon as practical, to disclose the wrongdoing to the Designated Officer who will begin an internal investigation process as well.

17. Investigation Protocols

17.1 The following will apply to all investigations conducted under these procedures:

17.1.1 The principles of procedural fairness and natural justice will be maintained throughout the process; and

17.1.2 To the extent possible, strict confidentiality will be maintained.

17.2 Investigations will be conducted so as to reasonably conform with the following expectations:

17.2.1 Specified timelines will be adhered to;

17.2.2 Where no timelines are specified, the investigator will proceed with diligence in accordance with the nature of the disclosure and its possible impact upon the Division, its trustees and staff, and any other persons or entities potentially affected by the investigation;

17.2.3 Legal principles relating to chain of possession and protection of documents or other materials will be followed; and

17.2.4 Decisions and recommendations (if any) will be made fairly and impartially.

18. Procedural Fairness and Natural Justice

18.1 The principles of procedural fairness and natural justice include the following:

18.1.1 All investigators must be free of real or perceived bias and conflicts of interest;

18.1.2 Investigators must make findings of fact only, and not speculate;

18.1.3 Findings of fact are based solely on evidence detailed in an investigator's report, and the sources of that evidence shall be detailed and preserved;

18.1.4 Conclusions are based solely on relevant evidence, properly disclosed in the investigator's report;

18.1.5 No relevant evidence is omitted from consideration or excluded from an investigator's report;

18.1.6 All parties to an investigation are treated with fairness, openness and honesty; and

18.1.7 Where adverse conclusions are drawn, the person against whom the conclusions are made will be given an opportunity to respond to the investigator's report.

18.2 Notwithstanding the duty of procedural fairness and natural justice, the Designated Officer will determine at which point, if any, a person in respect of whom a disclosure has been made will be advised of the fact and details of the disclosure. This decision will be made in light of all relevant considerations, including the nature and seriousness of the matters disclosed, and the potential impact on persons and property.

19. Wrongdoing discovered during investigation

19.1 If, while investigating a disclosure, an investigator discovers that another wrongdoing has occurred or might occur, the investigator must provide this information to the Designated Officer or Chief Officer as soon as possible. The Designated Officer or Chief Officer will determine the appropriate course of action, including initiating another investigation, referral to the Public Interest Commissioner, or referral to law enforcement or regulatory agencies.

20. Investigation Reporting

20.1 When an investigation is finished, the Designated Officer must prepare a report detailing at least the following matters:

20.1.1 Date of report;

20.1.2 Name of the person who made the disclosure of wrongdoing;

20.1.3 Date the disclosure was received;

20.1.4 A copy of the disclosure;

20.1.5 Date of acknowledgment of receipt of the disclosure;

20.1.6 Date upon which the Chief Officer was advised;

20.1.7 Date, if any, of referral to the Public Interest Commissioner or other agency;

20.1.8 Date of appointment of investigator;

20.1.9 Date investigation was commenced and completed;

20.1.10 Names of all persons interviewed;

20.1.11 Table of documentary and other evidence;

20.1.12 Time-frame of investigation;

20.1.13 Findings of fact with reference to sources and rationale for the findings;

20.1.14 All interview notes or transcript of recording; and

20.1.15 Recommendations, if any, of the Designated Officer regarding any corrective measures that the Division is to take.

21. Timelines

21.1 An investigation shall be completed and a report prepared and submitted to the Chief Officer within one hundred and ten (110) business days following receipt of a disclosure.

21.2 Upon request by the Designated Officer, the Chief Officer may grant an extension of up to thirty (30) business days, provided that the extension includes a requirement that the report must be submitted to the Chief Officer within the thirty (30) business day time period.

21.3 A further extension may only be granted with the permission of the Public Interest Commissioner.

21.4 In the event that an extension of time is granted for the completion of an investigation and report under this Administrative Procedure, the person who made the disclosure must be promptly advised when he or she may expect the next procedural step to occur or be completed.

22. Recommendations and Corrective Action

22.1 The Designated Officer will determine whether to include recommendations regarding corrective measures that are to be taken by the Division in response to a disclosure and investigation. Prior to being implemented, any such recommendations must be approved by the Chief Officer. The Chief Officer will inform the Designated Officer about any steps taken to implement the recommendations, except in circumstances in which the Designated Officer has been excluded from the investigation.

22.2 The Superintendent, Human Resource Services will be contacted in all cases where there may be an impact upon an employee's employment or there is, or may be, an allegation of reprisal, whether it be prior to the commencement of an investigation or through the outcome of the investigation.

22.3 Any recommendations for corrective action arising from an investigation must be approved by the Chief Officer. Once approved by the Chief Officer, the appropriate department must initiate steps to take the corrective measures within five (5) business days of the date of the approval. All corrective action must be completed within ninety days (90) of the date of the approval by the Chief Officer of the recommendations unless extenuating circumstances require further time as determined by the Designated Officer.

22.4 The Designated Officer will, within six (6) months of completion of an investigation, follow up with the accountable department to ensure recommended corrective measures and/or disciplinary action have been taken or directed.

23. Annual Report

23.1 The Chief Officer must prepare a report annually on all disclosures that have been made to the Designated Officer. The Designated Officer will prepare the report for approval by the Chief Officer and include the following information:

23.1.1 The number of disclosures received by the Designated Officer, the number of disclosures acted on and the number of disclosures not acted on by the Designated Officer;

23.1.2 The number of investigations commenced by the Designated Officer as a result of disclosures;

23.1.3 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.

23.2 The Annual Report shall be provided to the Board as information.

24. Protection from Reprisals

- 24.1 Any employee who has made a disclosure or participated in an investigation of a disclosure shall be protected from reprisal.
- 24.2 A reprisal is any measure taken or directed against an employee which may include dismissal, layoff, suspension, demotion or transfer, discontinuation or elimination of a job, change of job location, reduction in wages, change in hours or work, reprimand or any other measure that adversely affects the employee's employment or working conditions because the employee has, in good faith, sought advice about making a disclosure, made a disclosure, cooperated in an investigation commenced pursuant to this regulation or the Whistleblower Act, declined to participate in a wrongdoing or done anything in accordance with the Whistleblower Act.
- 24.3 Upon becoming aware of any reprisals arising from such circumstances, the Division will investigate and discipline, including termination of an employee's employment, any employee who is found to have participated in such conduct.
- 24.4 If an employee is subject to a reprisal, the Whistleblower Act requires the employee to make the complaint directly to the Public Interest Commissioner.
- 24.5 The Public Interest Commissioner will investigate the complaint and make recommendations to the Division. The Whistleblower Act provides that any person found by the Public Interest Commissioner to have taken, directed or counseled or directed another person to take or direct a reprisal against an employee is guilty of an offence and subject to a fine of up to \$25,000 for a first offence and up to \$100,000 for a subsequent offence.
- 24.6 Reasonable human resource management decisions may continue to be made and implemented by the Division so long as any such decisions are made in good faith. The provisions of this Administrative Procedure shall not interfere with any employment action taken as part of normal performance management practices or for reasons of misconduct.

25. Liability

- 25.1 No one charged with any responsibility under the Whistleblower Act or this Administrative Procedure, and who carries out his/her duties in good faith and conscience, shall be held personally liable for any action or claim arising out of their good faith execution of their duties.

26. Offences and Penalties

- 26.1 Part 7 of the Whistleblower Act outlines offences and associated fines. They are as follows:

Offence – false statement

- 46(1)** No person shall, in seeking advice about making a disclosure, in making a disclosure, or during an investigation, knowingly withhold material information or make a false or misleading statement, orally or in writing, to

(a) a designated officer;

- (b) a chief officer;
 - (c) the Commissioner; or
 - (d) a person acting on behalf of or under the direction of a designated officer, a chief officer or the Commissioner.
- (2)** No person shall counsel or direct another person to wilfully, in seeking advice about making a disclosure, in making a disclosure, or during an investigation, knowingly withhold material information or make a false or misleading statement, orally or in writing, to
- (a) a designated officer;
 - (b) a chief officer;
 - (c) the Commissioner; or
 - (d) a person acting on behalf of or under the direction of a designated officer, a chief officer or the Commissioner.

Offence – obstruction

- 47** No person shall wilfully obstruct, or counsel or direct a person to wilfully obstruct, a designated officer, a chief officer or the Commissioner, or any individual acting on behalf of or under the direction of a designated officer, a chief officer or the Commissioner, in the performance of a duty or function under this Act.

Offence – destruction, falsification, concealment

- 48** No person shall, knowing that a document or thing is likely to be relevant to an investigation under this Act
- (a) destroy, mutilate or alter the document or thing;
 - (b) falsify the document or make a false document or thing;
 - (c) conceal the document or thing; or
 - (d) direct, counsel or in any manner cause a person to do anything mentioned in clauses (a) to (c).

Offence and penalty

- 49** Any person who contravenes section 24, 46, 47 or 48 is guilty of an offence and liable
- (a) for a first offence, to a fine of not more than \$25,000; and
 - (b) for a 2nd or subsequent offence, to a fine of not more than \$100,000.

Limitation on prosecution

- 50** A prosecution under this Act may not be commenced later than 2 years after the day the alleged offence was committed.

Protection of Commissioner and others

- 51(1)** Subject to subsection (3), no action lies or may be commenced or maintained against
- (a) a designated officer;
 - (b) a chief officer;
 - (c) the Commissioner; or
 - (d) any person employed or engaged for services and acting on behalf of or under the direction of a designated officer, a chief officer or the Commissioner, in respect of anything done or omitted to be done in the exercise or intended exercise of any power under this Act or in the performance or intended performance of any duty or function under this Act.
- (2)** Subject to subsection (3), no person is liable to prosecution for an offence against any Act, and no action lies or may be commenced or maintained against a person, by reason of the person's compliance with any requirement of this Act.
- (3)** Subsections (1) and (2) do not apply to a person referred to in those subsections in relation to anything done or omitted to be done by that person in bad faith.

Proceedings of Commissioner not subject to review

- 52** No proceeding of the Commissioner is invalid for want of form and, except on the ground of lack of jurisdiction, no proceeding or decision of the Commissioner shall be challenged, reviewed, quashed or called into question in any court.

Act to provide additional remedies

- 53** The provisions of this Act are in addition to the provisions of any other Act or rule of law pursuant to which any remedy, right of appeal or objection is provided for any individual, or any procedure is provided for inquiry into or investigation of any matter, and nothing in this Act limits or affects any such remedy, right of appeal, objection or procedure.

Adopted: December 2, 2014
Reviewed/Revised: June 30, 2017, February 5, 2021

Reference: Education Act, Sections 51, 52, 53, 54, 196, 197, 204, 222, 225
Public Interest Disclosure (Whistleblower Protection) Act
Teaching Profession Act
Public Interest Disclosure (Whistleblower Protection) Regulation
ATA Code of Professional Conduct