

AP 4114: Public Interest Disclosure Act Administrative Procedures

The District is committed to supporting ethical conduct in its operations and seeks to foster a culture in which Employees are encouraged to disclose Wrongdoing, including by receiving, investigating and responding to Disclosures and by providing information and training about the PIDA, this Policy and the Procedures.

This Administrative Procedure applies to alleged wrongdoing related to operations or personnel. It does not displace other mechanisms for addressing and enforcing standards of conduct, disputes, complaints, or grievances, including issues of discrimination, bullying and harassment, racism, occupational health and safety, or disputes over employment matters or under collective agreements.

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

The District will not commit or tolerate Reprisals 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 Policy.

The District is committed to protecting the privacy of Disclosers, persons accused of Wrongdoing and those who participate in Investigations in a manner that is consistent with its obligations under the PIDA and FIPPA.

Definitions:

“Advice” means advice that may be requested in respect of making a Disclosure or a complaint about a Reprisal under this Policy or the PIDA;

“Designated Officer” means the Superintendent and any other senior member of Personnel designated by the Superintendent from time to time, which includes the Secretary Treasurer, Director of Human Resources Services, and the Chair of the Board of Education;

“Discloser” means an Employee or Member of the Board of Education who makes a Disclosure or seeks Advice or makes a complaint about a Reprisal;

“Disclosure” means a report of Wrongdoing;

“Employee” refers to a past and present employee of the District;

“FIPPA” means the *Freedom of Information and Protection of Privacy Act*, and all regulations thereto;

“Investigation” means an investigation undertaken by the District or by the Ombudsperson under the PIDA;

“Ombudsperson” means the Ombudsperson of British Columbia;

“Personal Information” 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;

“Personnel” means Employees and Members of the Board of Education;

“PIDA” means the *Public Interest Disclosure Act* of British Columbia, and all regulations thereto;

“Procedure” means the District’s Administrative Procedure associated with this Policy, as amended;

“Protection Official” means:

- a) in respect of a health-related matter, the provincial health officer,
- b) in respect of an environmental matter, the agency responsible for the *Emergency Program Act*, or
- c) in any other case, a police force in British Columbia.

“Referral” refers to a referral of allegations of Wrongdoing received from the Ombudsperson or another government institution for investigation by the District in accordance with the PIDA;

“Reprisal” means the imposition of, and any threat to impose, discipline, demote, terminate or any other act that adversely affects employment or working condition of a member of Personnel because they made a Disclosure, sought Advice, made a complaint about a Reprisal or participated in an Investigation;

“Respondent” means a person against whom allegations of Wrongdoing or a complaint of reprisal is made;

“Supervisor” includes:

- a) an Employee’s direct management supervisor,
- b) for School-based Employees, the Principal, or any Vice-Principal at the School where the Employee is assigned; and
- c) for the Board of Education, the Board Chair, or the Superintendent;

“Urgent Risk” arises when a member of Personnel reasonably believes that a matter constitutes an imminent risk of a substantial and specific danger to the life, health or safety of persons or to 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.

Procedures

1. Personnel who reasonably believe that a Wrongdoing has been committed or is about to be committed may make a Disclosure to any of the following:

- 1.1 that person's Supervisor;
 - 1.2 the Superintendent;
 - 1.3 a Designated Officer other than the Superintendent; or
 - 1.4 the Ombudsperson.
2. A Disclosure should be submitted in writing, and include the following information if known:
 - 2.1 a description of the Wrongdoing;
 - 2.2 the name of the person(s) alleged to be responsible for or to have participated in the Wrongdoing;
 - 2.3 the date or expected date of the Wrongdoing;
 - 2.4 if the Wrongdoing relates to an obligation under a statute or enactment, the name of that statute or enactment; and
 - 2.5 whether the Wrongdoing has already been reported, and if so, to whom and a description of the response received.
3. A Disclosure may be submitted to the District on an anonymous basis but must contain sufficient information to permit the District to conduct a full and fair investigation into the alleged Wrongdoing. If a Disclosure does not contain sufficient detail to permit investigation, the District may take no action with respect to the Disclosure. Any notices required to be given to a Discloser under this Policy or the PIDA will not be provided to an anonymous Discloser, except at the discretion of the Designated Officer and where the Disclosure has provided contact information.
4. 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 Designated Officer, or the Ombudsperson.
5. A Discloser should not make a Disclosure to a person if the allegations relate, in whole or in part, to Wrongdoing by that person, and any person who receives a Disclosure or Referral 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 Policy with responsibility for receiving a Disclosure.
6. The 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.
7. Before making a public disclosure of an Urgent Risk, Personnel must:
 - 7.1 consult with the relevant Protection Official (public health officer, Emergency Management BC, or police);
 - 7.2 receive and follow the direction of that Protection Official, including if the Protection Official directs the Employee not to make the public disclosure;

- 7.3 refrain from disclosing, publishing or otherwise sharing Personal Information except as necessary to address the Urgent Risk, and;
- 7.4 refrain from disclosing any information that is privileged or subject to a restriction on disclosure under the PIDA or any other enactment of British Columbia or Canada, including legal advice privilege, litigation privilege or another ground of common law privilege, and seek appropriate advice if the Employee is uncertain about what Personal Information, privileged or other information may be disclosed as part of a public disclosure.
- 8. 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.
- 9. 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 Designated Officer.
- 10. Each Supervisor or other Personnel who receives a Disclosure or Referral under this Policy must promptly refer the Disclosure or Referral, including all Disclosures Forms and other materials supplied, to the appropriate Designated Officer as follows:
 - 10.1 unless the allegations concern alleged Wrongdoing by the Superintendent, the Disclosure or Referral shall first be referred to the Superintendent, who may delegate their duties to any other Designated Officer;
 - 10.2 if the allegations concern alleged Wrongdoing by the Superintendent, then the Disclosure or Referral should be referred to the Secretary-Treasurer who shall act as the Designated Officer;
 - 10.3 if the allegations made in a Disclosure or Referral concern alleged Wrongdoing by both the Superintendent and the Secretary -Treasurer, then the Disclosure or Referral should be referred to the Chair of the Board of Education as the Designated Officer or any other Designated Officer, and;
 - 10.4 if the allegations made in a Disclosure or Referral concern Wrongdoing by all of the Designated Officers, then the Disclosure or Referral should be referred to the Ombudsperson.
- 11 The Designated Officer is responsible to:
 - 11.1 receive and respond to any Disclosure or Referral;
 - 11.2 receive and respond to reports made by Personnel about Urgent Risks;
 - 11.3 if the Designated Officer reasonably believes that an Urgent Risk exists, the Designated Officer may make a report to the relevant Protection Official;
 - 11.4 review allegations of Wrongdoing in a Disclosure or Referral and determine if they fall within the scope of the PIDA or the Policy;
 - 11.5 refer disclosures or allegations falling outside the scope of the PIDA or this Policy to the appropriate authority or dispute resolution process, as applicable;

- 11.6 if a Disclosure relates to Wrongdoing at another government body that is subject to the PIDA, refer the Disclosure to that institution;
 - 11.7 seek clarification of the allegations of Wrongdoing from the Discloser or referring institution as needed;
 - 11.8 if appropriate, initiate an Investigation into allegations of Wrongdoing;
 - 11.9 assess the risk of any Reprisal to the Discloser, and take appropriate action, if any, to mitigate that risk;
 - 11.10 manage communications with the Discloser and Respondent;
 - 11.11 notify the Discloser and the Respondent of the outcome of the Investigation; and
 - 11.12 Ensure that, in accordance with, all Personal Information received by the District related to the Disclosure, Referral, 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 the PIDA.
- 12 All Personnel are responsible to:
- 12.1 make any Disclosures in good faith and on the basis of a reasonable belief that Wrongdoing has or is expected to occur;
 - 12.2 refrain from engaging in Reprisals and report all Reprisals in accordance with this Procedure and the PIDA;
 - 12.3 maintain the confidentiality of Personal Information received in connection with a Disclosure, Referral, request for Advice or Investigation in accordance with the Policy, this Procedure, and the PIDA;
 - 12.4 provide their reasonable cooperation with investigations by the District or the Ombudsperson;
 - 12.5 seek appropriate advice if an Employee is uncertain about whether to make a Disclosure or a public disclosure of an Urgent Risk; and
 - 12.6 comply with the requirements of this Procedure and the PIDA concerning Urgent Risks.
- 13 Every person involved in receiving, reviewing, and investigating Disclosures, Referrals or complaints of Reprisals must carry out those function in an expeditious, fair and proportionate manner as appropriate in the circumstances and as required under the PIDA.
- 14 The District shall seek to complete all Investigations within 30 calendar days of receipt of a Disclosure or Referral or complaint of Reprisals, but the Designated Officer may shorten or extend this time period depending on the nature and complexity of the allegations.
15. The Designated Officer may expand the scope of any Investigation beyond the allegations set out in the Disclosure or Referral to ensure that any potential Wrongdoing discovered during an Investigation is investigated.

16. All Investigations shall be conducted by an internal or external investigator with sufficient qualifications and experience to carry out the Investigation.
17. The Designated Officer may consult with the Ombudsperson regarding a Disclosure or Referral 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.
18. The Designated Officer may refuse to investigate or postpone or stop an Investigation if the Designated Officer reasonably believes that:
 - 18.1 the Disclosure or Referral does not provide adequate particulars of the Wrongdoing;
 - 18.2 the Disclosure or Referral is frivolous or vexatious, has not been made in good faith, has not been made by a person entitled to make a Disclosure or Referral under the Policy or the PIDA, or does not deal with Wrongdoing;
 - 18.3 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 or Referral;
 - 18.4 the Disclosure relates solely to a public policy decision;
 - 18.5 the allegations are already being or have been appropriately investigated by the Ombudsperson, the District or other appropriate authority;
 - 18.6 the Investigation may compromise another investigation; or
 - 18.7 the PIDA otherwise requires or permits the District to suspend or stop the Investigation.
19. Subject to the District's obligations under FIPPA the Discloser and the Respondent(s) will be provided with a summary of the District's findings, including:
 - 19.1 notice of any finding of Wrongdoing,
 - 19.2 a summary of the reasons supporting any finding of Wrongdoing;
 - 19.3 any recommendations to address findings of Wrongdoing.
20. All Personal Information that the District collects, uses or shares in connection with a Disclosure, Referral, or request for Advice, or an Investigation shall be treated as confidential and shall be used and disclosed by the District only as described in the Policy, the Procedures and the PIDA unless otherwise permitted or required under FIPPA or other applicable laws.
21. Personal Information that is collected, used or shared by the District in the course of receiving, responding to or investigating a Disclosure, a request for Advice, a Referral, or a complaint of a Reprisal shall be limited to the Personal Information that is reasonably required for these purposes.
22. Any person who, in their capacity as Personnel, 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 Policy or the PIDA, except with the consent of the Discloser or as authorized or required by the PIDA or other applicable laws.

- 23 The District shall ensure there are reasonable security measures in place to protect all Personal Information that the District collects or uses in the course of receiving or responding to a Disclosure, a request for Advice, a Referral, or complaint of a Reprisal 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 and Member of the Board of Educations internally on a need to know basis.
- 24 The District will not tolerate Reprisals against Personnel.
- 25 Any member of Personnel who believes that they have been the subject of a Reprisal may make a complaint to:
 - 25.1 the Ombudsperson, who may investigate in accordance with the procedures set out in the PIDA; or
 - 25.2 to a Designated Officer, who shall investigate the complaint in accordance with the provisions of this Procedure.
- 26 Any member of Personnel who engages in any Reprisals shall be subject to disciplinary action up to and including dismissal.
- 27 Each year, the Superintendent shall prepare a report for the June Board Meeting concerning Disclosures, including:
 - 27.1 the number of disclosures received, including referrals of disclosures, and the number acted on and not acted on;
 - 27.2 the number of investigations commenced as a result of a disclosure;
 - 27.3 in the case of an investigation that results in a finding of wrongdoing:
 - 27.3.1 a description of the wrongdoing;
 - 27.3.2 any recommendations, including those made by the Ombudsperson;
 - 27.3.3 any corrective action taken in relation to the wrongdoing or the reasons why no corrective action was taken, and;
 - 27.3.4 any other information prescribed by regulation.
- 28 In preparing a report under this section, a chief executive, or a delegate of the chief executive, must delete or exclude any material that would:
 - 28.1 unreasonably invade a person's privacy;
 - 28.2 reveal the identity of a discloser, or;
 - 28.3 reveal the identity of an individual who was the subject of an investigation.