

Administrative Procedure 490

Human Resources

PUBLIC INTEREST DISCLOSURE (WHISTLEBLOWER PROTECTION)

BACKGROUND

The charter board maintains a positive working environment for all Westmount Charter School employees and a culture characterized by integrity, respect, trust and care and expects all staff to demonstrate high ethical standards in their work. Westmount Charter School will take action in an objective manner to address reports of wrongdoing within Westmount Charter School without retribution to Westmount Charter School employees who report wrongdoing in good faith.

The Public Interest Disclosure (Whistleblower Protection) Act (the “Whistleblower Act”) and the Public Interest Disclosure (Whistleblower Protection) Regulation (the “Whistleblower Regulation”) require public bodies such as school boards to create procedures for managing and investigating disclosures of serious wrongdoing, and protecting employees who make such disclosures.

DEFINITIONS

In this administrative procedure:

1. “Reprisal” (from the *Public Interest Disclosure (Whistleblower Protection) Act (PIDA)*, section 24) means no person shall take or direct, or counsel 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 this *Act*, declined to participate in a wrongdoing or done anything in accordance with this *Act*:
 - 1.1 a dismissal, layoff, suspension, demotion or transfer, discontinuation or elimination of a job, change of job location, reduction in wages, change in hours of work or reprimand;
 - 1.2 any measure, other than one mentioned in clause (1.1), that adversely affects the employee’s employment or working conditions; and
 - 1.3 a threat to take any of the measures mentioned in clause (1.1) or (1.2).

PURPOSE

- To deter and detect wrongdoing within Westmount Charter School in order to positively impact the reputation, effectiveness and finances of Westmount Charter School, and enhance the working environment for Westmount Charter School employees.
- To provide clear guidance for the safe disclosure of any wrongdoing occurring within Westmount Charter School.
- To protect from retaliatory action any Westmount Charter School employee who in good faith discloses wrongdoing occurring within Westmount Charter School. Protection from retaliation is also known as “whistleblower” protection.
- To manage, investigate and make recommendations respecting disclosures of wrongdoing and reprisals.

PROCEDURES

1. Designation of Chief Officer
 - 1.1 *The Whistleblower Act* designates the superintendent as Chief Officer with overall responsibility for these procedures, and for the management and investigation of disclosures of wrongdoing.

2. Designation of Designated Officer

- 2.1 The superintendent has designated the human resources director to be the Designated Officer, with responsibility for the management and investigation of disclosures under the *Whistleblower Act*.
- 2.2 The Designated Officer may delegate tasks required to be performed under these procedures, but retains overall management and investigatory responsibility, except in circumstances in which the Chief Officer has determined it is inappropriate for the Designated Officer to perform those roles in relation to a particular disclosure. In that case, the Chief Officer must assume management and investigatory responsibility, and may delegate tasks as the Chief Officer sees fit, or refer the matter to the Public Interest Commissioner, who is head of the government body that administers the *Whistleblower Act*.

3. Application of this Administrative Procedure

- 3.1 This administrative procedure applies to wrongdoing in or related to Westmount Charter School, its campuses, board office and employees that involve:
 - 3.1.1 A contravention of an *Act* of Alberta or Canada or the regulations related to those acts.
 - 3.1.2 An act or omission that creates:
 - 3.1.2.1 substantial and specific danger to the life, health and safety of individuals other than a danger that is inherent in the performance of the duties or functions of an employee; or
 - 3.1.2.2 a substantial and specific danger to the environment.
 - 3.1.3 Gross mismanagement, including an act or omission that is deliberate and that shows a reckless or willful disregard for the proper management of public funds or a public asset.
 - 3.1.4 The delivery of a public service, including the management or performance of:
 - 3.1.4.1 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
 - 3.1.4.2 the duties and powers resulting from an enactment identified or described in the regulations or any funds administered or provided as result of the enactment;
 - 3.1.4.3 employees, by a pattern of behaviour or conduct of a systemic nature that indicates a problem in the culture of the organization relating to bullying, harassment or intimidation;
 - 3.1.4.4 a wrongdoing prescribed in the regulations; or
 - 3.1.4.5 knowingly directing or counseling an individual to commit a wrongdoing mentioned in the above clauses.

4. No Reprisals

- 4.1 An employee, who in good faith:
 - seeks advice about making a disclosure
 - makes or made a disclosure
 - cooperated in an investigation conducted under the *Public Interest Disclosure (Whistleblower Protection) Act*
 - declined to participate in a wrongdoing

- or does anything in accordance with this act

will not be subject to actions or threats of dismissal, layoff, suspension, demotion, transfer, discontinuation or elimination of a job, change of job location, reduction in wages, change in hours of work, or reprimand, or any other measure that adversely affects the employee's employment or working conditions.

- 4.2 An employee may make a written complaint to the Public Interest Commissioner if the employee alleges that a reprisal has been taken or directed against the employee. Such a written complaint must, according to the *Act*, be made on the Complaint of Reprisal Form found at <https://yourvoiceprotected.ca/for-employees/reprisal-form/>.
- 4.3 Any Westmount Charter School employee who is found to have taken retribution against an individual who has disclosed wrongdoing or knowingly make malicious, misleading or false disclosure are subject to appropriate disciplinary action up to and including termination of contractual relationship, termination of employment and/or loss of privilege/appointment, as would be the case with any other disciplinary action.
- 4.4 Reasonable human resource management decisions made in good faith do not constitute a reprisal.

5. Disclosure

- 5.1 Any Westmount Charter School employee 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, and other alternative processes for resolution of the employee's concern.
- 5.2 An employee who reasonably believes that he or she has 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 directly to the Public Interest Commissioner.
- 5.3 Disclosures of wrongdoing must be made to the human resources director (Designated Officer) in writing utilizing the *PIDA* Disclosure Form. The *Public Interest Disclosure (Whistleblower Protection) Act* Disclosure Form outlines the information required in a disclosure and is provided here in attachment.

The disclosure form to the Commissioner can be found at the following link:

<https://yourvoiceprotected.ca/for-employees/disclosure-form/>

In the event that disclosure to the human resources director as 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 request the Chief Officer to designate an alternate Designated Officer for that disclosure. The alternate Designated Officer shall have all the powers of the Designated Officer for the purpose of that disclosure.

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 (or alternate Designated Officer where the subject matter of the disclosure involves the Designated Officer) shall:

- 5.3.1 advise the board chair of the nature of the disclosure, whereupon the board may authorize an investigation into the disclosure; and
 - 5.3.2 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.
- 5.4 Any Westmount Charter School employee may also contact the office of the Public Interest Commissioner to advise they have made a disclosure to their Designated Officer for the purposes of commencing an investigation.

- 5.5 Disclosures should be factual rather than speculative and contain as much specific information as possible.
- 5.6 If the Designated Officer reasonably believes that the matter to which the disclosure related 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.
- 5.7 Notwithstanding whether a disclosure is referred to the Commissioner, where the Designated Officer is aware of:
 - 5.7.1 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
 - 5.7.2 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.
- 5.8 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 *Education Act*.
- 5.9 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.
- 5.10 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.
- 5.11 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.
- 5.12 Anonymous disclosures will be dealt with in accordance with the provisions of this administrative procedure.
- 5.13 Employees shall maintain strict confidentiality of any information related to, or arising out of, a disclosure.

6. Investigations

- 6.1 The Designated Officer may request advice from the Commissioner with respect to the management and investigation of a disclosure.
- 6.2 Upon receiving a disclosure, the Designated Officer shall make a decision whether to investigate.
- 6.3 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.

- 6.4 Should the subject matter of the disclosure be more appropriately dealt with according to another policy or administrative 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 administrative procedure.
 - 6.5 The Designated Officer may utilize both internal personnel and external resources, for the purpose of conducting the investigation, subject to the compliance with all statutory and/or regulatory obligations.
 - 6.6 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.
 - 6.7 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:
 - 6.7.1 as necessary for this administrative procedure and to conduct the investigation in accordance with the principles of procedural fairness and natural justice;
 - 6.7.2 in accordance with *PIDA* or any other statute; and
 - 6.7.3 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.
 - 6.8 Investigations shall be conducted in accordance with the principles of procedural fairness and natural justice.
 - 6.9 The Designated Officer may decline to investigate where the disclosure:
 - 6.9.1 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;
 - 6.9.2 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
 - 6.9.3 does not provide adequate particulars about the wrongdoing to permit the conduct of a fair and effective investigation.
 - 6.10 The Designated Officer is not required to investigate a disclosure or, if an investigation has been initiated, may discontinue the investigation if more than two (2) years has passed since the date that the wrongdoing was discovered.
 - 6.11 Employees shall participate in investigations as required and cooperate fully with the Designated Officer or any investigators appointed by the Designated Officer.
7. Timelines
- 7.1 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 ten (10) business days from the date on which the disclosure of wrongdoing or complaint of reprisal is received, whether an investigation will be undertaken.
 - 7.2 The investigation must be concluded and the investigation report provided to the

Chief Officer not more than ten (10) business days from the date on which the disclosure of wrongdoing or complaint of reprisal was received.

- 7.3 These timelines may be extended by the Chief Officer provided that the total extensions grants do not exceed the overall time period for investigation and provision of the investigation report by more than thirty (30) business days, or for a longer period if permitted by the Commissioner.

8. Report

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 exercises authority delegated to him or her by the board to suspend or terminate a teacher or administrative designation under the *Education 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 *Education Act* for the superintendent to consider that recommendation.

8.3 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.

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. Good Faith

9.1 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.

9.2 An employee who knowingly make deliberately false and/or malicious allegations of wrongdoing may be subject to disciplinary action up to and including termination of employment.

10. Annual Reporting

10.1 The Chief Officer will prepare a report annually on all disclosures that have been made to the Designated Officer. This annual report will be available to the public on request and will be subject to the reporting requirements of Alberta Education. The annual report will include the following information:

10.1.1 the number of disclosures received by the Designated Officer;

10.1.2 the number of disclosures acted on;

10.1.3 the number of disclosures not acted on by the Designated Officer;

10.1.4 the number of investigations commenced by the Designated Officer as a result of disclosures; and

10.1.5 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 not corrective measure was taken.

11. Communication

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

Legal Reference: *Public Interest Disclosure (Whistleblower Protection) Act*
Freedom of Information and Protection of Privacy Act
Cross Reference: Public Interest Disclosure (Whistle Blower Protection) Regulation
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