

REGULATION 8400

WHISTLEBLOWER PROTECTION

Adopted: October 30, 2023
Revised: November 27, 2023
Frequency of Review:

This Regulation outlines how the District will administer its Whistleblower Protection Policy. A sample copy of a disclosure form is attached as Appendix A.

1. DEFINITIONS

Capitalized terms in this Regulation have the meanings set out in the Policy, and the following additional terms shall have the following meanings:

1. “**Designated Officer**” means the Superintendent and any other senior member of the School District designated by the Superintendent from time to time, which includes, in accordance with section 5. of this Regulation, the Secretary Treasurer;
2. “**Disclosure Form**” means the form attached to this Regulation as Appendix A;
3. “**Ombudsperson**” means the Ombudsperson of British Columbia;
4. “**Policy**” means the School District’s Whistleblower Protection Policy;
5. “**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.
6. “**Respondent**” means a person against whom allegations of Wrongdoing or a complaint of reprisal is made;
7. “**School**” means
 - a. a body of students that is organized as a unit for educational purposes under the supervision of a principal, vice principal or director of instruction
 - b. the teachers and other staff members associated with the unit, and
 - c. the facilities associated with the unit,and includes a Provincial resource program and a distributed learning school operated by a board;
8. “**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
- 9. **“Urgent Risk”** arises where there is a reasonable belief 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.

2. WHO MAY MAKE A DISCLOSURE

- 1. Any Employee may report Wrongdoing under this Policy if the alleged Wrongdoing occurred or was discovered while the Employee was employed or engaged by the School District.
- 2. Reports received from members of the public or from Employees who were not employed by the School District at the time that the alleged Wrongdoing occurred or was discovered are outside the scope of the Policy and this Regulation.

3. HOW TO MAKE A DISCLOSURE

- 1. An Employee who reasonably believes that a Wrongdoing has been committed or is about to be committed may make a Disclosure to any of the following:
 - a. that person’s Supervisor;
 - b. the Superintendent;
 - c. a Designated Officer other than the Superintendent; or
 - d. The Ombudsperson.
- 2. A Disclosure should be submitted in writing using the Disclosure Form or in other written form, and include the following information if known:
 - a. a description of the Wrongdoing;
 - b. the name of the person(s) alleged to be responsible for or to have participated in the Wrongdoing;
 - c. the date or expected date of the Wrongdoing;
 - d. if the Wrongdoing relates to an obligation under a statute or enactment, the name of that statute or enactment; and
 - e. 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 School District on an anonymous basis, but must contain sufficient information to permit the School District to conduct a full and fair investigation into the alleged Wrongdoing. If a Disclosure does not contain sufficient detail to permit investigation, the School District may take no action with respect to the Disclosure. Any notices required to be given to a Discloser under this Policy or 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 alleged Wrongdoing by that person, and any person who receives a Disclosure 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.

4. HOW TO MAKE A DISCLOSURE ABOUT URGENT RISK

1. 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.
2. Before making a public disclosure of an Urgent Risk the Employee must:
 - a. consult with the relevant Protection Official (public health officer, Emergency Management BC, or police),
 - b. receive and follow the direction of that Protection Official, including if the Protection Official directs the Employee not to make the public disclosure,
 - c. refrain from disclosing, publishing or otherwise sharing Personal Information except as necessary to address the Urgent Risk;
 - d. refrain from disclosing any information that is privileged or subject to a restriction on disclosure under PIDA or any other enactment of British Columbia or Canada, including legal advice privilege, litigation privilege or another ground of common law privilege, and
 - e. seek appropriate advice if uncertain about what Personal Information, privileged or other information may be disclosed as part of a public disclosure.
3. 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 in accordance with section 3 above.
4. 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.

5. REFERRAL TO DESIGNATED OFFICER

1. Each Supervisor and any other Employee who receives a Disclosure under this Policy must promptly refer it, including all Disclosures Forms and other materials supplied, to the appropriate Designated Officer as follows:

- a. Unless the allegations concern alleged Wrongdoing by the Superintendent, the Disclosure shall first be referred to the Superintendent who may delegate their duties under the Policy and this Regulation to any other Designated Officer;
- b. If the allegations concern alleged Wrongdoing by the Superintendent, then the Disclosure should be referred to a Designated Officer other than the Superintendent to assess whether the Disclosure falls within the scope of PIDA or this Policy. If so, then the Disclosure should be referred to Office of the Ombudsperson.

6. RESPONSIBILITIES OF THE DESIGNATED OFFICER

1. The Designated Officer is responsible to:
 - a. Receive and respond to any Disclosure;
 - b. Receive and respond to reports made about Urgent Risks;
 - c. If the Designated Officer reasonably believes that an Urgent Risk exists, the Designated Officer may make a report to the relevant Protection Official;
 - d. Review allegations of Wrongdoing in a Disclosure and determine if they fall within the scope of PIDA or the Policy;
 - e. Refer disclosures or allegations falling outside the scope of PIDA or this Policy to the appropriate authority or dispute resolution process, as applicable;
 - f. If a Disclosure relates to Wrongdoing at another government body that is subject to PIDA, refer the Disclosure to that institution;
 - g. Seek clarification of the allegations of Wrongdoing from the Discloser or referring institution as needed;
 - h. If appropriate, initiate an Investigation into allegations of Wrongdoing in accordance with section 8 below;
 - i. Assess the risk of any Reprisal to the Discloser, and take appropriate action, if any, to mitigate that risk;
 - j. Manage communications with the Discloser and Respondent;
 - k. Notify the Discloser and the Respondent of the outcome of the Investigation in accordance with section 8; and
 - l. Ensure that, in accordance with section 9 of this Regulation, all Personal Information received by the School District related to the Disclosure, 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 PIDA.

7. RESPONSIBILITIES OF EMPLOYEES

1. All Employees are responsible to:
 - a. make any Disclosures in good faith and on the basis of a reasonable belief that Wrongdoing has or is expected to occur;

- b. refrain from engaging in Reprisals and report all Reprisals in accordance with this Regulation and PIDA;
- c. maintain the confidentiality of Personal Information received in connection with a Disclosure, request for Advice or Investigation in accordance with the Policy, this Regulation, and PIDA;
- d. provide their reasonable cooperation with investigations by the School District or the Ombudsperson;
- e. seek appropriate advice if uncertain about whether to make a Disclosure or a public disclosure of an Urgent Risk; and
- f. comply with the requirements of this Regulation and PIDA concerning Urgent Risks.

8. INVESTIGATIONS

1. Every person involved in receiving, reviewing and investigating Disclosures must carry out those function in an expeditious, fair and proportionate manner as appropriate in the circumstances and as required under PIDA.
2. The School District shall seek to complete all Investigations within 90 calendar days of receipt of a Disclosure, but the Designated Officer may shorten or extend this time period depending on the nature and complexity of the allegations.
3. The Designated Officer may expand the scope of any Investigation beyond the allegations set out in the Disclosure to ensure that any potential Wrongdoing discovered during an Investigation is investigated.
4. All Investigations shall be conducted by an internal or external investigator with sufficient qualifications and experience to carry out the Investigation, though overall responsibility and accountability for the Investigation remains with the Designated Officer.
5. The Designated Officer may consult with the Ombudsperson regarding a Disclosure 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.
6. The Designated Officer may refuse to investigate or postpone or stop an Investigation if the Designated Officer reasonably believes that:
 - a. the Disclosure does not provide adequate particulars of the Wrongdoing;
 - b. the Disclosure is frivolous or vexatious, has not been made in good faith, has not been made by a person entitled to make a Disclosure under the Policy or PIDA, or does not deal with Wrongdoing;
 - c. 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;
 - d. the investigation of the disclosure would serve no useful purpose because the subject matter of the disclosure is being, or has been, appropriately dealt with;
 - e. the Disclosure relates solely to a public policy decision;

- f. the allegations are already being or have been appropriately investigated by the Ombudsperson, the School District or other appropriate authority;
 - g. the Investigation may compromise another investigation; or
 - h. PIDA otherwise requires or permits the School District to suspend or stop the Investigation.
7. Subject to the School District's obligations under FIPPA and section 3 above, the Discloser and the Respondent(s) will be provided with a summary of the School District's findings, including:
- a. notice of any finding of Wrongdoing;
 - b. a summary of the reasons supporting any finding of Wrongdoing;
 - c. any recommendations to address findings of Wrongdoing.

9. PRIVACY AND CONFIDENTIALITY

1. All Personal Information that the School District collects, uses or shares in connection with a Disclosure, request for Advice, or an Investigation shall be treated as confidential and shall be used and disclosed by the School District only as described in the Policy, the Regulation and PIDA unless otherwise permitted or required under FIPPA or other applicable laws.
2. Personal Information that is collected, used or shared by the School District in the course of receiving, responding to or investigating a Disclosure or a request for Advice Reprisal shall be limited to the Personal Information that is reasonably required for these purposes.
3. Any person who, in their capacity as an Employee, 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 PIDA, except with the consent of the Discloser or as authorized or required by PIDA or other applicable laws.
4. The School District shall ensure there are reasonable security measures in place to protect all Personal Information that the School District collects or uses in the course of receiving or responding to a Disclosure, a request for Advice, 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 internally on a need to know basis.

10. REPRISALS

1. The School District will not tolerate Reprisals against Employees.
2. Any Employee who believes that they have been the subject of a Reprisal may make a complaint to the Ombudsperson, who may investigate in accordance with the procedures set out in PIDA.
3. Any person who engages in any Reprisals shall be subject to disciplinary action up to and including, for an Employee, dismissal for cause.

Appendix A

Sample: Whistleblower Policy - Disclosure Form

INSTRUCTIONS

Before filling out this Disclosure Form, please review the School District's Whistleblower Protection Policy and Regulation (8400). Please also ensure that you provide all required details and attach copies of any documents you wish to submit as part of your report. The completed form (together with all attachments) may be submitted by email or mail to whistleblower@sd61.bc.ca or 556 Boleskine Rd, Victoria, BC V8Z 1E8.

PRIVACY STATEMENT

The personal information submitted in this Disclosure Form is collected by the School District under sections 26(a) and (c) of the Freedom of Information and Protection of Privacy Act, and will be used to assess, review, investigate and respond to allegations of wrongdoing made under the Public Interest Disclosure Act. If you have any questions about the collection, use or disclosure of your personal information in connection with your disclosure, please contact the Superintendent at whistleblower@sd61.bc.ca, 556 Boleskine Rd, Victoria, BC V8Z 1E8, or 250-475-4162.

CONFIDENTIALITY

Reports made under the Whistleblower Protection Policy and the Public Interest Disclosure Act are received and held in confidence by the School District. The reports and information received will be used and shared only to the extent reasonable and necessary to assess, investigate and respond to your disclosure and will not be used or disclosed for other purposes except as permitted or required under the Freedom of Information and Protection of Privacy Act and the Public Interest Disclosure Act or other applicable laws.

COMPLETING THE DISCLOSURE FORM

The purpose of this Disclosure Form is to assist you in making a disclosure under the Whistleblower Protection Policy. The requested information is to ensure we have sufficient information to carefully review, investigate and respond to your disclosure. If you are unable to provide all requested details at the time you make your initial disclosure, you may ask to submit additional details at a later time.

DISCLOSURE REPORT

1. Are you a current employee of the School District?

- Yes No

2. Were you an employee of the School District when the alleged wrongdoing occurred or was discovered?

- Yes No

3. Please enter your contact information below so that we can communicate with you about your disclosure. Your identity and contact information may be shared with investigators to allow them to communicate with you.

While anonymous disclosures may be accepted under the Whistleblower Protection Policy, we may not be able to investigate if we are unable to contact you to confirm you are a current or former employee or to obtain further details, evidence or clarification about your disclosure.

NAME	ADDRESS
EMAIL	PHONE
ADDITIONAL INSTRUCTIONS e.g. How would you prefer to be contacted? May we leave messages for you?	

4. A report may be made under the Whistleblower Protection Policy or the Public Interest Disclosure Act for any of the following categories of wrongdoing. Please check any that apply:

- serious act or omission that, if proven, would constitute an offence under an enactment of British Columbia or Canada;
- 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;
- a serious misuse of public funds or public assets;
- gross or systemic mismanagement;
- knowingly directing or counselling a person to commit a wrongdoing described above.

If your report does not fall within one of these categories, you may wish to consider whether your report falls under another [policy or regulation](#) of the School District.

5. In the space below, please describe the alleged wrongdoing and the person(s) alleged to have committed the wrongdoing. Please provide as much detail as you are able, including:

- A description of the wrongdoing and any relevant background,
- The names of those responsible,
- When and where the wrongdoing occurred,
- Names of people who witnessed the wrongdoing, if available,
- Any law or legislation that has been breached.

DESCRIPTION OF ALLEGED WRONGDOING

6. Have you previously reported the wrongdoing to the School District?

- Yes No

If yes, please indicate who the report was made to and any actions taken.

REPORT DATE AND PERSON REPORTED TO

7. Please describe any other steps or action that you or others have taken to address, report or prevent the reported wrongdoing.

OTHER ACTION TAKEN

8. Do you know of any other organizations that are investigating the reported wrongdoing or whether other complaints or claims about the wrongdoing have been filed (e.g. court filings, grievance, human rights complaint, privacy complaint, police investigation, etc.). Please explain.

OTHER INVESTIGATIONS
