



Whistleblower

Administrative Procedure 5.210

Board Governance Policy Cross Reference:

Legal Reference: Canadian Charter of Rights and Freedoms; Bill 5 – The Public Interest Disclosure Act; FIPPA; MB Workplace Safety and Health Act and Regulation

Date Adopted: June 2019

Date Amended:

Background

The purpose of The Public Interest Disclosure (Whistleblower Protection) Act is to facilitate the disclosure and investigation of significant and serious matters in or relating to the public service, that are potentially unlawful, dangerous to the public or injurious to the public interest; and to protect persons who make those disclosures. The purpose of an investigation into a disclosure of wrongdoing is to bring the wrongdoing to the attention of the appropriate public body, and to recommend corrective measures that should be taken.

Evergreen School Division believes in the highest ethical standards for its staff. Personnel must perform their duties and responsibilities with honesty and integrity while complying with all applicable laws and regulations. Evergreen School Division will make every reasonable effort to protect itself against wrongdoing and will establish and maintain a system that will ensure, to the fullest extent possible, the prevention and detection of wrongdoing.

This Administrative Procedure provides a formal means for Division personnel to raise concerns they have regarding wrongdoing in the areas covered in [Bill 5 - The Public Interest Disclosure \(Whistleblower Protection\) Act](#). It also provides a framework for the disclosure and investigation of wrongdoing, as well as protection from reprisal or threat of reprisal for employees who make disclosures. It is intended to encourage employees at all levels of the organization to act with integrity.

All Division personnel are bound by the requirements of the Whistleblower Procedure. Any activity in violation of the Procedure may subject the violator to appropriate disciplinary action, which may include in the appropriate circumstance, termination of employment or legal action.

The Whistleblower Procedure is aligned with and supports the principles and expectations of the Code of Conduct.

Responsibility to Report

This Procedure applies to all trustees and employees of the Evergreen School Division.

It is the responsibility of all Division personnel to report any evidence of violations, suspected violations or wrongdoings regarding:

- a) An act or omission constituting an offence under an Act of the Legislature or the Parliament of Canada, or a regulation made under an Act;
- 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 the duties or functions of an employee;
- c) Gross mismanagement, including of public funds or a public asset;
- d) Knowingly directing or counselling a person to commit a wrongdoing described in clauses (a) to (c).

Any other stakeholder or member of the public, having an interest in the Division, is encouraged to report such complaints to Manitoba Ombudsman.

Reprisal

Reprisal means any of the following measures taken against an employee because the employee has, in good faith, sought advice about making a disclosure, made a disclosure, or cooperated in an investigation under The Public Interest Disclosure (Whistleblower Protection) Act: a disciplinary measure; a demotion; termination of employment; any measure that adversely affects their employment or working conditions; or a threat to take any combination of the measures listed above.

Protection from Reprisal

No person shall take a reprisal against an employee or direct that one be taken against an employee because the employee has, in good faith, sought advice about making a disclosure from their supervisor, Superintendent/CEO or designate, or the Ombudsman; made a disclosure; or cooperated in an investigation under The Public Interest Disclosure (Whistleblower Protection) Act. An employee or former employee who alleges that a reprisal has been taken against them may make a written complaint to the Ombudsman.

Complaint Procedures

This Procedure is intended to encourage Division personnel to raise serious concerns regarding conduct within the Division. All complaints must be submitted on **5.210A: Reporting Suspected Wrongdoing Form**; however, a complainant may submit the complaint on a confidential basis in writing, in person or both.

Division personnel should discuss concerns or submit complaints to their immediate supervisor. If the individual is not comfortable addressing the matter with their supervisor or the individual is not satisfied with their supervisor's response, the individual is encouraged to address the matter with the Superintendent/CEO or designate. School Principals are required to report suspected violations to the Superintendent/CEO or designate.

The complainant's identity will be protected (kept confidential to the extent possible) during the investigation of the complaint. Ongoing communication will be maintained with the disclosing employee regarding the status of the investigation. The anonymity of complainants cannot be assured where legal proceedings arise as a consequence of the complaint.

In all cases, the employee who is alleged to have committed the infraction will be made aware of the complaint at an appropriate point during the investigation and will have an opportunity to respond to the allegations.

All Division personnel have a duty to cooperate in the investigation of a complaint. The Superintendent/CEO or designate may require an employee to produce any records relevant to an investigation and be interviewed for the purpose of the investigation. All disclosure files shall be handled in a confidential manner, maintained in a secure location protected from unauthorized access.

Providing Details on the Subject Matter of the Complaint

All complainants must complete ***5.210A: Reporting Suspected Wrongdoing Form***.

The complainant should give as much information as possible on the subject matter of the complaint so that the information is sufficient to enable a full investigation. The Public Interest Disclosure (Whistleblower Protection) Act in section 12 describes relevant information as:

- A description of the wrongdoing
- The name of the person or persons alleged to
 - Have committed the wrongdoing, or
 - Be about to commit the wrongdoing
- The date of the wrongdoing
- Whether the wrongdoing has already been disclosed and a response received

How Complaint Will Be Managed

Upon receiving a complaint, the action taken will depend on the nature of the issue that has been reported. If the Superintendent/CEO or designate determines that the complaint does not fall under the authority of this Procedure, the complaint will be addressed according to the appropriate Administrative Procedure(s). If the complaint is from someone other than an employee, they will be advised to file their complaint with Manitoba Ombudsman.

The Superintendent/CEO or designate will notify the complainant and acknowledge receipt of the complaint within 5 business days.

Complaints will be managed in one of the following ways:

- The Superintendent/CEO or designate is responsible for investigating and resolving most complaints under this Procedure. In some circumstances, these individuals may seek the assistance of other Division personnel or Manitoba Ombudsman in investigating the complaint. For example, the Superintendent/CEO may enlist the assistance of the Secretary-Treasurer in a complaint concerning a financial matter.

Under no circumstances will a matter be referred to a person who is the subject of the complaint or is otherwise an inappropriate person to assist with the investigation.

- The Superintendent/CEO or designate will address all reported concerns or complaints regarding corporate accounting practices, internal controls or auditing. The Superintendent/CEO or designate will notify the Board of any such complaint and work with the Board until the matter is resolved.
- If the complaint concerns the Superintendent/CEO or a trustee, the complaint should be made directly to Manitoba Ombudsman.

Decision Not to Investigate

The designated officer or Ombudsman may decide not to investigate a disclosure, or may cease an investigation, if he or she is of the opinion that:

- The subject matter of the disclosure could more appropriately be dealt with, initially or completely, according to a procedure provided under another Act;
- The disclosure is frivolous or vexatious, or has not been made in good faith or does not deal with a sufficiently serious subject matter;
- So much time has elapsed between the date when the subject matter of the disclosure arose and the date when the disclosure was made that investigating it would not serve a useful purpose;
- The disclosure relates to a matter that results from a balanced and informed decision-making process on a public policy or operational issue;
- The disclosure does not provide adequate particulars about the wrongdoing as required by section 12 of [Bill 5 - The Public Interest Disclosure \(Whistleblower Protection\) Act](#); or
- The disclosure relates to a matter that could be more appropriately dealt with according to the procedures under a collective agreement or employment agreement; or
- There is another valid reason for not investigating the disclosure

If the Superintendent/CEO or designate or Ombudsman decides not to investigate or to cease investigating a disclosure, they must inform the person making the disclosure of the decision. In the case of a decision made by the Superintendent/CEO or designate, they will also advise that the person may make a disclosure to the Ombudsman.

Reporting the Outcomes of Investigations

Upon completing an investigation, the Superintendent/CEO or designate or Ombudsman must prepare a report containing their findings and any recommendations about the disclosure and the wrongdoing. The Superintendent/CEO or designate or Ombudsman must give a copy of the report to the responsible Chief Executive Officer. When the matter being investigated involves the Chief Executive Officer, the Ombudsman must also give a copy of the report to the Chair of the School Board.

The Superintendent/CEO or designate or the Ombudsman must inform the employee who made the disclosure of the results of the investigation. The Superintendent/CEO or designate or Ombudsman may do so in the manner and at the time they consider appropriate.

Each year, the Superintendent/CEO or designate must prepare a report on any disclosures of wrongdoing that have been made to a supervisor or designated officer of the Evergreen School Division.

The report must include the following information:

- The number of disclosures received and the number acted on and not acted on;
- The number of investigations commenced as a result of a disclosure;
- In the case of an investigation that results in a finding of wrongdoing, a description of the wrongdoing and any recommendations or corrective actions taken in relation to the wrongdoing or the reasons why no corrective action was taken.

The report must be included in a public annual report of the Division.

Preservation of Records

The Division shall retain as part of their confidential records, any complaints and any resulting investigations according to the Division's Records Management Practice. This shall include the making of written summaries of any oral complaints.

Acting in Good Faith

Complainants are required under this Procedure to act in good faith when making a complaint. The complainant must have reasonable grounds to believe a wrongdoing or potential wrongdoing has occurred. Employees are encouraged, supported and protected when bringing forward serious matters relating to the Division that could be unlawful or dangerous to the public.