

Phoenix Foundation Whistleblower Policy and Procedure

1) Policy Statement

Phoenix Foundation is committed to providing students the best possible, quality learning opportunities in a safe and caring environment characterized by behaviour consistent with the school's stated moral and ethical beliefs.

In this context, the school's governing board and administrator, teachers and other employees, parents and their children, and members of the supporting school community must be assured that their concern about any wrongdoing will be taken seriously in the best interest of the school and all members of its community.

Teachers and other employees have the right and obligation to report any wrongdoing.

The Phoenix Foundation commits that any disclosure of wrongdoing or alleged wrongdoing reported to the school's administrator, will be properly reviewed and investigated and then acted upon by the school, as appropriate.

An employee making a disclosure in good faith will be protected against reprisal or other detrimental impacts within the power of the school.

A copy of the school's whistleblower policy and procedures is available in the school's Learning Commons, in the main, and on the school's website.

2) Purpose of the Procedures

The purpose of whistleblower procedures is to allow teachers and other employees to report any wrongdoing to the school administrator so that the matter may be addressed in keeping with the principles of due process and fundamental justice.

Should the individual witnessing or alleging wrongdoing, as defined in Clause 4(e), report the matter to the Public Interest Commissioner, as named under Alberta's *Public Interest Disclosure Act*, the school's administrator will make every effort to assist the Commissioner and their office in dealing with said report of wrongdoing and to bring the matter to a reasonable and just conclusion.

Pursuant to Alberta's *Public Disclosure (Whistleblower) Protection Act*, this policy and attendant procedures aim to:

- a) Facilitate disclosure and investigation of serious wrongdoing at the Phoenix Foundation as defined in the *Act* and outlined in the school's policy;
- b) Protect employees and others who make disclosures in good faith;
- c) Manage, investigate and make recommendations in respect to disclosures of wrongdoing and reprisals for disclosure; and,
- d) Promote confidence in the administration and operations of school among all members of the school community.

3) Definitions

- a) "Chief Officer" means the school administrator.
- b) "Designated officer" means the senior official assigned or individual contracted by the school governing body to manage and investigate any disclosure under this policy.
- c) "Teacher or employee" means a teacher or individual employed by Phoenix, or a teacher or employee who has suffered a reprisal, including a termination, owing to a disclosure.
- d) "Public entity" means an accredited private school including the Phoenix Foundation.
- e) "Wrongdoing" means:
 - i) A contravention of Canadian and Alberta legislation, including regulations, and school policies and requirements mandated by legislation;
 - ii) An act or omission that creates:
 - (1) A substantial and specific danger to the life, health or safety of individuals other than a danger inherent in the performance of duties or functions of an employee, or
 - (2) A substantial and specific danger to the environment;
 - iii) Gross mismanagement of public and/or school funds or asset(s);
 - iv) Knowingly directing or counseling an individual to commit a wrongdoing mentioned in clauses a) to c).
- f) "Reprisal" means any adverse employment action, or adverse action taken against a parent or student or member of the school community who seeks advice about making a disclosure, makes a disclosure, cooperates in investigating a disclosure, or refuses to participate in obscuring or hiding a disclosure. The meaning of "reprisal" may include adverse employment related action including dismissal, layoff, suspension, demotion or transfer, elimination of a position, reduction in wages or hours of work, or a reprimand; any other measures that adversely impact an individual including bullying, shaming or shunning; and, threats to do any of the above.

4) The Disclosure Process

- a) Employees who have witnessed a wrongdoing should report to the school's chief officer, any of the following or any other matter that represents wrongdoing:
 - i) Corrupt conduct
 - ii) Fraud and theft
 - iii) Official misconduct
 - iv) Maladministration
 - v) Waste of public resources
 - vi) Reprisal against a report of Wrongdoing.
 - vii) Endangerment of the health and safety of students, staff or the public
 - viii) Endangering of the environment
 - ix) Any other matter the reporting individual, in good faith, deems to be serious wrongdoing.

- b) When reporting a matter, the individual should:
 - i) Not discuss the matter to others in order to better enable the organization to protect the reporting individual from reprisal or detrimental action;
 - ii) Make the report to the chief officer as defined in this policy and procedures document, or, if the report is about the chief officer, then the individual should report the matter to Alberta's Public Interest Commissioner;
 - iii) Recognize that the chief officer may refer the matter reported, where appropriate, to a person or body charged with addressing such matters, for example, to a student conduct committee, to a staff grievance body, or to a board appeal committee;
 - iv) Understand that any report made should be made in good faith and on reasonable grounds and not false, misleading or vexatious;
 - v) Understand that reporting a wrongdoing does not absolve the reporting individual from disciplinary action, if the individual had a role in the wrongdoing;
 - vi) Report the matter internally; and,
 - vii) Report the matter to the Public Interest Commissioner if in fear of reprisal or for the record.

- c) The chief officer, when receiving a report will:
 - i) Establish that the individual making the disclosure is formally reporting the matter and if so, the chief officer will commit to handling the matter through the process established under this policy and procedures document;

- ii) Make a determination about whether the disclosing individual requires any form of protection or support as a result of making the disclosure;
 - iii) Determine the urgency of the disclosure;
 - iv) Ascertain whether the disclosing individual has informed any other person within the school community of the matter being disclosed;
 - v) Ensure that the individual making the disclosure is aware of his or her right to report in other ways, if appropriate, or to the Commissioner under the *Act*;
 - vi) Inform the disclosing individual that a disclosure must be in writing and include a description of the wrongdoing, the name of the individual or individuals alleged to have committed a wrongdoing or about to commit a wrongdoing, the date and time of the wrongdoing, and any other information deemed important;
 - vii) Establish whether the matter has already been disclosed to the Commissioner; and, if so, inform the disclosing person that prior to proceeding with the disclosure, the chief officer will communicate with the Commissioner's office to determine how best to proceed without duplication;
 - viii) Recommend, if appropriate, that the disclosing individual, should direct the disclosure, if he or she has not already done so, to another appropriate body, for example, a governing board committee or external body such as the labour relations board; and
 - ix) Keep the disclosing person informed about timelines applicable to the disclosure.
- d) The chief officer will ensure that the individual making a disclosure clearly understands that any review and investigation of a disclosure is consistent with the principles of procedural fairness and natural justice, including the requirements that:
- i) Any decision made must be in keeping with the policies of the school, applicable codes of conduct, standards and Alberta and Canada legislation;
 - ii) The person about whom a disclosure is made will be informed about the substance of the allegation or disclosure, and supporting evidence, possible impending recommendation(s) or decision(s), relevant criteria for possible recommendations or decisions and possible consequences, including penalties;
 - iii) The person about whom a disclosure is made will be provided with a reasonable opportunity to be heard or respond (orally or in writing) to an allegation or disclosure before a recommendation or decision is finalized;
 - iv) Any person making a recommendation or decision in respect to a disclosure review or investigation will do so without personal interest in the outcome;
 - v) Any review and investigation will follow the prescribed timelines whereby a disclosure is: i) acknowledged within five business days of receipt, ii) a decision is made and the disclosing individual is informed about the decision to proceed or not to proceed with a review and investigation within 10 days of receipt of the disclosure,

and the investigation report must be complete within 110 days of receipt of the disclosure;

When a disclosure is made about an alleged wrongdoing, the chief officer must:

- vi) To the extent possible, ensure the confidentiality of the individual making the disclosure, the individual about whom the disclosure is made and any witnesses that may be related to the disclosure;
- vii) Once an investigation report is completed and provided to the chief officer, ensure the confidentiality of the individual making the disclosure, the individual about whom the disclosure was made and any witnesses related to the disclosure.

5) Roles and Responsibilities in Respect to Disclosures

- a) Teacher or other staff member employed by the school may make a disclosure in writing to the chief officer.
- b) A written disclosure may be made using the form in Appendix A of this document or in a manner that provides the information outlined in Appendix A.
- c) It is understood that the Phoenix Foundation has designated officers who have clear responsibilities with respect to disclosures.
- d) The chief officer of the school is responsible for:
 - i) Maintaining an environment in which disclosure of wrongdoing is viewed as a responsibility and obligation on the part of all engaged in the school community;
 - ii) Communicating to the school community the commitment of the school to the highest standards of ethical and accountable conduct;
 - iii) Establishing an ongoing process for ensuring that those engaged in the life of the school are aware of the whistleblower policy and have access to the procedures for disclosing wrongdoing;
 - iv) Ensuring that members of the school community are aware of the internal disclosure procedure and the school's commitment to upholding the protection Alberta legislation affords individuals making a disclosure;
 - v) Carry out the duties outlined in 5(c) and 5(d) above;
 - vi) Naming a designated officer, who may be a senior person internal to the school or a person contracted by the school who will investigate (or designate an investigator),

- report and make finding(s) and recommendations in respect to a disclosure of alleged wrongdoing;
- vii) Providing resources, including making available documents, staff and space to that enables the designated officer to reasonably investigate, report and make recommendations for action in respect to a disclosure;
 - viii) Receiving a report and recommendations in respect to a disclosure and taking action on recommendations or recommendations in keeping with required timelines;
 - ix) Ensuring that due processes are in place to mitigate the risk of reprisals;
 - x) Managing the workplace to reduce the impact of reprisals or threats of reprisal;
 - xi) Reporting to the Commissioner any reprisal or threat of reprisal against a person making a disclosure or providing witness information about a disclosure;
 - xii) Taking remedial action in respect to any finding arising from a disclosure of alleged wrongdoing and recommending to the governing board changes to school policy, or him or herself amending operational procedures, to address any future systemic issues; and,
 - xiii) Where the school is relatively small and the Chief Officer names designated officers (and/or investigators) external to the school, then the Chief Officer will maintain a tracking system for disclosures of wrongdoing, resulting reports, and the disposition of matters raised and provide annually information to the school official responsible for producing the school's annual report under legislation governing independent schools.
 - xiv) Ensure that information about any PIDA related disclosure is annually reported as part of the annual education results report.
- e) The designated officer is an individual appointed by the Chief Officer to review, investigate and report on a disclosure of alleged wrongdoing.
- i) The designated officer may be a senior school official who enjoys credibility with staff, parents, students and the supporting school community on the basis of preparation and experience; or, the designated officer may be a contracted individual external to the school who will serve as the designated officer upon being so named by the chief officer in respect to a specific disclosure.
- f) Whether internal or external, pursuant to 6(e) above, the designated officer shall be an individual who:
- i) Has strong interpersonal and communication skills;
 - ii) Understands that the tasks of reviewing, investigating, reporting and making findings and recommendations must be completed in a unbiased manner that is evidence based;
 - iii) Respects the evidence and views of all concerned;

- iv) Makes sound, fact based judgments;
 - v) Has investigation and or reporting expertise or access to such expertise; and,
 - vi) Has a sound understanding and appreciation of the letter and spirit of Alberta's PIDA, legal considerations that may arise and a sound understanding of the school's policy framework.
- g) The designated officer is responsible for carrying out duties pursuant to Alberta's PIDA, including:
- i) Liaising with the Chief Officer and the Office of the Public Interest Commissioner in respect to a disclosure, or if a designated officer internal to the school, in respect to any disclosure generally;
 - ii) If a designated officer internal to the school, maintaining a tracking system for all disclosures;
 - iii) Making a determination in respect to a disclosure whether it in fact constitutes a public interest disclosure in keeping with the *Whistleblower Act*;
 - iv) If the designated officer determines that the disclosure may not constitute a public interest disclosure, then the officer shall report accordingly, in writing, to the Chief Officer and the individual who made the disclosure, and include a recommendation, if appropriate, a legitimate avenue or avenues whereby the substance of the disclosure may best be appropriately addressed;
 - v) Appoint, if appropriate, a separate investigator;
 - vi) Manage the disclosure process and oversee the investigator, if the designated officer has engaged a separate individual to serve as the investigator of the disclosure;
 - vii) Establish and maintain a confidential filing system that contains all relevant information related to a disclosure;
 - viii) Review the evidence compiled in the course of the investigation of a disclosure and make findings and recommendations to the Chief Officer;
 - ix) Advise the individual who made the initial disclosure of the status of the investigation into said disclosure and inform the individual of the final outcome of the investigation;
 - x) Take all reasonable measures to keep confidential the identity of the individual making a disclosure as well as the individual(s) who may be the focus of the disclosure;
 - xi) Take all reasonable measures to protect from reprisals individuals making a disclosure or providing evidence in respect to a disclosure;
 - xii) Provide to the Chief Officer and the individual who made the disclosure, in writing, a report of the investigation, the outcomes and recommendations for action;
 - xiii) If an internal designated officer, maintain a tracking system for disclosures of wrongdoing, resulting reports, and the disposition of matters raised and provide information annually to the Chief Officer or school official responsible for producing the school's annual education results report.

6) Confidentiality and Disclosures

a) Information about a disclosure must be:

- i) Shared only among the investigator (if a separate individual), the designated officer, and the Chief Officer;
- ii) Stored on paper and on electronic files that are kept separate, and to which access is:
 - (1) Limited to only those in 7(a)(i) above;
 - (2) Held in locked filing cabinets the contents of which are marked “confidential”
 - (3) And/or in password protected electronic files;

b) The designated officer, whether internal or external, shall advise the individual making a disclosure of the risks to confidentiality and the circumstances under which confidentiality may not be maintained, including, but not limited to:

- i) The impact of the disclosing individual having shared the matter at hand with others within the school;
- ii) The likely probability that issue at the heart of the disclosure will be attributed to the individual making the disclosure;
- iii) The ability of investigating the issue without alerting those in the school about the identity of the individual making the disclosure;
- iv) The Whistleblower *Act* applies notwithstanding a code of professional conduct provision that may result in a negative impact on the person making a disclosure, if the person about whom the disclosure being made is not informed prior to the disclosure, for example, *Practice Review of Teachers Regulation*, Schedule, Section 3 provisions;
- v) The intent of the Act to protect the individual against threats or reprisals for the reporting of wrongdoing;
- vi) The possibility that the issue at the heart of the disclosure may or must be addressed, by the designated officer if he or she believes there is reason to believe that it must be reported or disclosed through another process, for example, a report to the police or a complaint about professional conduct or practice, and that such complaints may involve identifying the person making a disclosure; and,
- vii) The possibility that the designated officer may determine that the matter must be reported or disclosed through another process, for example, a report to the police or a complaint about professional conduct or practice to the appropriate authority, and that such complaints may involve identifying the person making a disclosure.

7) Anonymous Disclosures

- a) Under Section 21 of Alberta's PIDA, a person may make an anonymous disclosure directly to the Public Interest Disclosure Commissioner. The Commissioner may choose to investigate the matter or refer the disclosure to a public entity, including an independent school, to investigate and address; where the Commissioner refers a matter, the Commissioner may request regular updates and follow up as to the status of the matter, including recommendations and the extent to which they have been implemented.
- b) An anonymous report must contain sufficient information to permit the Commissioner or a public entity to review or investigate the matter:
 - i) Sufficient information is defined as the information described in Appendix A with the exception of the name and contact information of the individual making the disclosure;
 - ii) A person making an anonymous disclosure must be aware that the issues or risks described under section 7(b) above of this document may apply in the case of an individual making an anonymous disclosure.
 - iii) Notwithstanding the issues and risks involved in making a disclosure, anonymous or otherwise, the school's officers will take all reasonable measures, including those under section 7(a) above, to maintain the anonymity of a disclosure.

8) Publishing Public Disclosure Information

- a) The Chief Officer, or where the designated officer is internal to the school, shall maintain annual records that include:
 - i) The number of disclosures received within the school year;
 - ii) The number of disclosures acted on and not acted on, including reasons in cases where the disclosure was not acted on;
 - iii) The number of investigations pursued by the designated officer and/or an investigator named by the designated officer;
 - iv) In the case of investigations that resulted in a finding of wrongdoing, a description of the wrongdoing, recommendations for action in the investigation report and remedial actions taken in respect to recommendations, or where not action was taken, the reason(s) for no action being taken.

- b) The information outlined in Section 9(a) shall be annually reported in a section of the school's annual education results report and a copy of that report must be readily available to all members of the school community and the public.

9) Receiving and Assessing a Disclosure

- a) The chief officer of the Phoenix Foundation shall receive all disclosures, acknowledge receipt of a written disclosure and refer the disclosure to the internal or external designated officer for review and investigation within the required timelines.
- b) The Chief Officer, at the request of the designated officer may extend the timelines applicable to the processing of a disclosure as per section 5(d)(v) above.
- c) The chief officer shall put in place a file tracking system for disclosures that includes but is not limited to the following:
 - i) The original copy of the complaint including the date, time and by whom it was received;
 - ii) Confirmation of receipt and notification of complainant and confirmation of
 - iii) Adherence to the required timelines as per section 5(d)(v) above;
 - iv) Information collected as part of the review or investigation of a disclosure, including documents, lists of witnesses, witness interviews signed by witnesses and any other artifacts;
 - v) The designated officer's and investigator's report (if the investigator is other than the designated officer) including findings and recommendations for action; and,
 - vi) Implementation of report recommendations or actions taken or not taken, including reason for inaction.
- d) The Chief Officer will make a preliminary analysis of the alleged wrongdoing to ensure it constitutes a wrongdoing under this policy and Alberta's *Public Interest Disclosure Act*.
 - i) Not included in an alleged wrongdoing is a "grievance" which is a personal complaint about the complainant's own employment situation; in a public interest disclosure, the person making a disclosure is normally a witness, whereas in a grievance, an employee normally is a complainant.
 - ii) The Chief Officer also may make a determination that the matter is one that should forthwith be reported to the appropriate police services, or is better addressed as a professional conduct or professional practice complaint.
 - iii) Where the Chief Officer makes a determination under ii) above, then the Chief Officer will afford the disclosing individual the opportunity to make the required

- report or complaint; or, failing timely action on the part of the disclosing individual, the Chief Officer will initiate the report or make the complaint;
- iv) On the basis of information available, the Chief Officer may determine that the subject of the disclosure constitutes a dispute or difference between or among individuals and parties and may recommend to the individual making the disclosure and another party, recourse to a mediation process;
 - v) If a Chief Officer takes action under i), ii) iii) or iv) above, the Officer will maintain written record of the disposition of the matter.
- e) When making the preliminary analysis of a disclosure, the Chief Officer will take into account the following matters and determine:
- i) The validity and credibility of the information provided, including, if necessary, interviewing the individual making a disclosure;
 - ii) The gravity of the disclosure for the individual making the disclosure, for the school and the education system, including independent schools generally, and the public interest generally;
 - iii) Whether the complaint is trivial, frivolous or vexatious, if possible;
 - iv) Whether the critical nature of the disclosure requires immediate action, for example in the case of a criminal act or impending criminal act, or, an imminent concern for the health and safety of students or other members of the school community;
 - v) If other dispute resolution processes may redress the alleged wrongdoing more effectively than the PIDA process;
 - vi) Sources of information that may provide sufficient support to prove or disprove the disclosure;
 - vii) Take into account the time that has elapsed between the alleged wrongdoing and the disclosure of the wrongdoing;
 - viii) Review all aspects of the disclosure and make an assessment of the likelihood of a reprisal against the individual making the disclosure and put in place, to the degree possible, mitigating measures; and,
 - ix) Provide in writing to the individual making the disclosure and to the disclosure file, the reasons for proceeding, or not proceeding, with said disclosure.
- f) The designated officer or the investigator, if the investigator is a person other than the designated officer, when assigned a disclosure, shall forthwith meet with the individual making the disclosure to:
- i) Clarify, to the extent possible, the substance of disclosure;
 - ii) Establish the facts or other evidence that support the disclosure's alleged wrongdoing that has or is likely to occur; and,

- iii) Identify any corroborating documents, witnesses or artifacts that may assist the investigation.
- g) The designated officer or the investigator, if the investigator is a person other than the designated officer, when assigned a disclosure and after having completed the steps outlined under 10(f) above, shall develop an investigation plan consistent with the content of Appendix B.
- h) The designated officer or the investigator, if the investigator is a person other than the designated officer, shall complete a written investigation report providing:
 - i) Evidence based supports for the report's findings;
 - ii) Including in appendices or through clear references, evidence supporting the report's findings; and,
 - iii) Recommendations for actions on the part of the school's governing body, Chief Officer or other entity.

10) Identifying and Acting Upon Imminent Risk

- a) Under Section 10(2) of PIDA, an employee who discloses a matter that involves imminent risk is required to disclose the matter directly to the Public Interest Disclosure Commissioner.
- b) Even though the individual making a disclosure has disclosed the matter to the Commissioner, the individual making the disclosure must also disclose the matter to the Chief Officer of the school where the school does not have an internal designated officer

Final Reading: Feb. 19, 2016

Board Chair: _____

Board Secretary: _____

APPENDIX A

Phoenix Foundation
Public Interest Disclosure Form

This Form serves as the public disclosure of wrongdoing form of the Phoenix Foundation as authorized under Section 13 of Alberta's PIDA.

Name of the person making the disclosure: _____

Contact information for the disclosing individual

Telephone: _____

Address: _____

E-mail: _____

Description of the alleged wrongdoing – including specifically – 1) the wrongdoing; 2) when it took place; 3) where it took place; 4) the context in which it took place; 5) the name of the person who allegedly committed or is about to commit the wrongdoing; 6) any supporting information – documentation, electronic sources, witnesses - that may provide support for the reason to believe that a wrongdoing has been committed.

(If space is insufficient above, please continue the description on the back of the page.)

Has a disclosure of a wrongdoing been made as a report or complaint under other legislation (for example, a professional conduct or practice complaint) or a report of a criminal code violation? Please describe, how, when, where, and to whom. Also please describe acknowledgement of the report, if any.

Has a disclosure been made to the Public Interest Disclosure Commissioner? Please describe how, when and confirmation of the report, if any.

APPENDIX B

Public Interest Disclosure Investigations

An investigation may be conducted by the designated officer or by an investigator or team of investigators named by the designated officer.

Investigations must be carried out systematically and thoroughly. The evidence gathered through the investigation hopefully will assist with making a determination about the validity and gravity of the disclosure. The investigator will identify the substance of the disclosure and identify evidence in support or otherwise of the disclosure.

The objectives of the investigation of a disclosure are to:

- Gather information through documents, artifacts, witness statements as well as statements from the alleged wrongdoer;
- Gather information in keeping with procedural fairness principles;
Collate information relating to the disclosure as expeditiously as possible;
- Based on the information collected, make evidence-based findings objectively and impartially;
- Make recommendations to the school or other appropriate bodies based on the findings.

When conducting an investigation, good administrative and internal investigation principles must be adhered to, specifically:

- The investigation must be conducted in a timely manner;
- Any findings must be objectively determined;
- Interviews and the collection of documents are handled in keeping with the principles of procedural fairness and natural justice;
- Discretion is practiced when conducting the investigation;
- Confidentiality is maintained to the degree possible in the circumstances;
- Sensitive information is protected, especially where the investigation may lead to further legal or professional due process procedures; and,
- Recommendations, including recommendations for action, are reasonable and practical in the context.

Principles of procedural fairness and natural justice may be reviewed by linking to the Alberta Ombudsman's site at: <http://www.ombudsman.ab.ca/fairness-guidelines.php>. Also, comprehensive overview of fairness and natural justice issues is: <http://lawjournal.mcgill.ca/documents/27/2/mullan.pdf>.

APPENDIX C

EXAMPLES OF REPORTING PROTOCOL

Behaviours or actions a teacher or other employee, a parent and/or student, or member of the school community may report and to whom?

Bullying or Harassment?

Consult your school's bullying and harassment policy and report to the individual indicated, most often a teacher or the school principal.

Workplace Grievance?

Consult your school's grievance policy, if available, and report to the person responsible for employment and staff grievances, most often the school administrator.

Workplace Health or Safety?

If your school has a health and safety person, speak to him or her; failing that, report your concern to the school principal.

Official Misconduct or a Reprisal?

Report the matter to the school's administrator; if that is not appropriate, then report it to the chair of the school's governing body.

Maladministration or waste of public or school funds?

This may be a public interest disclosure that should be reported to the school's administrator; failing that, the matter should be reported to the governing board's treasurer.

Not sure about the wrongdoing or a failure to act?

Speak to the school's administrator in order to clarify and then report your concerns.