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Public Interest Disclosure Act (PIDA)

BACKGROUND & RATIONALE

The CAPE Charter Board supports the *The Public Interest Disclosure Act* [PIDA]. The CAPE Charter Board believes in a safe, positive, supportive environment whereby employees feel comfortable in all aspects of their job including when it comes to filing a complaint and is committed to the protection of employees from reprisal for making a disclosure. This belief in a positive supportive environment is imbedded in the CAPE charter and CAPE practices.

The CAPE Charter Board's commitment to a safe, positive, supportive environment is reinforced by the development of procedures that aims to ensure the protection of employees from reprisal for making a disclosure.

The CAPE Charter Board aims to ensure that training and awareness at all levels is structured and that staff members/employees are aware of this policy and procedures.

PURPOSE

The purpose of these procedures is to ensure that:

- employees are aware of and understand *The Public Interest Disclosure Act* [PIDA];
- those in possession of information regarding reportable acts are aware of their right to report;
- employees are aware of procedures for making a complaint;
- employees are aware of procedures that protect them against reprisal when making a complaint;
- define roles and responsibilities within the public body;
- procedures are established for responding to a complaint.

DEFINITIONS:

1. **Chief Officer** - the deputy minister of a department, the department head of an office of the Legislature and, with respect to a public entity, the prescribed individual (Superintendent). The PIDA Regulation further defines a chief officer in section 2(2) through definitions in existing statutes in order to capture the broader public sector. For the purpose of these procedures, the CAPE Superintendent is the chief officer.

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2. **Designated Officer** -the senior official (Principal) designated by each chief officer to manage and investigate disclosures under this Act. For the purpose of these procedures, the CAPE Principal is the designated officer.
3. **Employee** - an individual employed by, or an individual who has suffered a reprisal and has been terminated by, a department, a public entity or an office of the Legislature or an individual. The PIDA Regulation expands the definition of employee to include certain health professionals in the public health sector, school boards, accredited private schools that receive grants, charter schools, corporate agencies, boards and commissions with employees, and colleges, universities and technical institutes.
4. **Public entity** - any agency, board, commission, Crown corporation or other entity designated as a public entity in the regulations or relating to departments, public entities or offices of the Legislature or relating to employees. The PIDA Regulation identifies the public entities through existing legislative frameworks in the broader public sector as identified above.
5. **Wrongdoing** - a contravention of an Act, a regulation made pursuant to an Act, an Act of the Parliament of Canada or a regulation made pursuant to an Act of the Parliament of Canada, an act or omission that creates: (i) a substantial and specific danger to the life, health or safety of individuals other than a danger that is inherent in the performance of the duties or functions of an employee, or (ii) a substantial and specific danger to the environment, gross mismanagement of public funds or a public asset, and knowingly directing or counselling an individual to commit a wrongdoing mentioned above.
6. **Reprisal** - any adverse employment action taken against an employee who seeks advice on making a disclosure, makes a disclosure, or co-operates in an investigation of wrongdoing, or declines to participate in a wrongdoing in accordance with the Act. Examples of reprisal include 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, any other measure that adversely affects the employee's employment or working conditions (e.g., bullying), and threats to do any of the above.
7. **Disclosure** - except where the context requires otherwise, means a disclosure of wrongdoing made in good faith by an employee in accordance with this Act.

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PROCEDURE

8. To assist employees in submitting a disclosure of wrongdoing, the Principal is to provide a disclosure of wrongdoing form.
9. Any employee who is aware of wrongdoing is encouraged to make a complaint to the Principal using the disclosure of wrongdoing form.
10. Any employee is to make a complaint to an alternate designated by the Superintendent if the Principal is a conflict of interest with respect to the nature of the disclosure or a person involved.
11. The employee must provide the Principal a written statement using the disclosure of wrongdoing form:
 - a description of the wrongdoing;
 - the name of the individual or individuals alleged;
 - (i) to have committed the wrongdoing; or
 - (ii) to be about to commit the wrongdoing
 - the date of the wrongdoing;
 - whether a disclosure in respect of a wrongdoing has been made pursuant to the procedures established by the department, public entity or office of the Legislature and whether a response has been received, and if so, a copy of the response;
 - any additional information that the Principal may reasonably require in order to investigate the matters set out in the disclosure; and
 - any other information prescribed in the regulations.
12. Employees can disclose directly to the office of the Public Interest Commissioner, circumventing their chief officer and designated officer, in the following circumstances:
 - a) If the employee has made a disclosure in accordance with the procedures outlined in Section 5 of the Act, and an investigation has not been completed in accordance with those procedures, including timelines;
 - b) If the employee has made a disclosure in accordance with the procedures outlined in Section 5 of the Act, an investigation has been completed, a final decision has been issued, and the employee is dissatisfied with the decision;
 - c) If the subject matter of the disclosure involves the chief officer or designated officer;
 - d) If the employee reasonably believes a matter constitutes an imminent risk of substantial and specific danger to life, health and safety of individuals, and there is

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- insufficient time to make a disclosure of the matter to the designated officer. (Must ensure designated officer be notified as soon as practical).
- e) If the employee has made a disclosure to their designated officer but is unable to complete the process due to a reprisal directed towards them, or a reasonable expectation a reprisal may be directed towards them.
13. The Principal shall acknowledge, in writing, receipt of disclosure within five (5) business days from the date the complaint was received or within a shorter period of time if the nature of the disclosure warrants immediate action.
14. The Principal shall determine whether an investigation will proceed within ten (10) business days from the date the complaint was received.
15. An employee who is the subject of a disclosure will be informed of the same once a determination is made to proceed with an investigation, unless circumstances dictate otherwise.
16. The Principal shall proceed with the investigation securing statements from all possible sources of information and will take immediate action to prevent theft, alteration, or destruction of all relevant records related to the alleged or suspected wrong doing.
17. The investigation shall be handled with sensitivity, discretion and confidentiality to the extent allowed by the circumstances and the law.
18. The Principal shall complete the investigation and submit the investigation report to the Superintendent within one hundred ten (110) business days from the date the complaint was received.
19. If, in the opinion of the Principal, there is not enough time to complete a thorough investigation, the Superintendent may extend the the time limit by thirty (30) business days.
20. The investigation report, in addition to the statement of findings, must include recommendations for corrective action, if applicable.
21. The employee that made the disclosure must be notified, in writing, that the investigation is complete and what, if any, recommendations are made based on the findings of the investigation within five (5) business days of the submission of the investigation report to the Superintendent.
22. Outcomes should be fair and reasonable for the public body and the employee making the disclosure. There are a variety of outcomes offered, such as:
- an explanation;
 - an apology;
 - mediation;

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- an admission of fault;
 - a change in decision;
 - a change to policy, procedure or practice;
 - a correction of misleading records;
 - financial compensation, including a refund of any fees;
 - the waiving of a debt;
 - the remission of a penalty;
 - protection to the employee making the disclosure;
 - disciplinary action; or
 - referral of the matter to an external agency for further investigation or prosecution.
23. No person shall take or direct, or counsel or direct 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.
24. A reprisal can take the form of 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, reprimand or any measure that adversely affects the employee's employment or working conditions, or a threat to take any of the measures mentioned above.
25. Any individual found to have engaged in acts of reprisal are subject to disciplinary action that may include a letter of reprimand, suspension without pay, demotion, and, in extreme cases, termination of employment.
26. An employee may make a written complaint to the Commissioner if the employee alleges that a reprisal has been taken or directed against the employee.
27. A complaint under this section must be in the prescribed form.

ADDITIONAL INFORMATION:

28. It is an offence under the *The Public Interest Disclosure Act* to:
- make a false statement;
 - obstruct or counsel another person to obstruct, any individual involved with the disclosure of wrongdoing process from performing a duty;
 - destroy, falsify, or conceal any document or thing that is likely to be relevant to an investigation or counsel another person to do so.

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29. Penalties under this Act include a fine of no more than \$25,000 (first offence) to \$100,000 (subsequent offences).Section 50 imposes a two-year limitation on
30. from the date the alleged offence was committed

References:

CAPE Policy Manual, Section 9

The Public Interest Disclosure Act

Human Rights Act

Criminal Code of Canada

Individual's Rights Protection Act

Human Rights, Citizenship and Multiculturalism Act

Freedom of Information and Protection of Privacy Act

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