

ADMINISTRATIVE PROCEDURES	
Administrative Procedure Section PUBLIC RELATIONS/ COMMUNICATIONS	Policy Number 704
Administrative Procedure Number AP-PRC-704	Page 1 of 11

ADMINISTRATIVE PROCEDURE TITLE

Confidential Communication Between Students and Staff

1.0 ADMINISTRATIVE PROCEDURE

- 1.1 In general, staff members will maintain the confidentiality of communications received from students to the extent reasonably and legally possible. Students, however, can never be guaranteed complete confidentiality with respect to any communication made to school staff.
- 1.2 Students should be advised that, while staff members are willing to discuss personal issues with students, staff cannot guarantee that the information will not be disclosed to anyone; the staff member may have a professional and/or legal obligation to disclose the information to the student's parent/guardian or other appropriate authorities.
- 1.3 The requirement to disclose information may arise in one of two ways:
 - (a) at the initiative of the staff member himself or herself, based on the nature of the information that has been disclosed, considering the staff member's legal obligations and/or the best interests of the student or others; or
 - (b) at the specific request of a third party - for example, the parent(s)/guardian(s) or police, in accordance with the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*.

2.0 CONFIDENTIALITY

- 2.1 Confidentiality relates to whether and under what conditions persons holding information communicated to them in confidence, or obtained with an expectation of confidence, may voluntarily disclose such information to a third party. Confidential information may exist in many forms. For instance, it may be oral or in writing. In addition, the information may be partly public and partly private.
- 2.2 Whether or not a communication will be recognized as confidential depends on such factors as the nature of the information, the context in which the information was provided and the relationship between the parties exchanging the information.
- 2.3 Confidentiality issues commonly arise in a school setting when a student confides in a guidance counsellor, social worker, psychologist, or other such professional. The goal of having these services available to students is to develop a rapport and maintain trust with students. Teachers and principals may also receive confidential information while serving as an advisor or confidant for students. However, anyone serving in the capacity of a counsellor should be made aware that the private discussions with students cannot always remain confidential.
- 2.4 Principals, teachers, ministers, physicians, or psychologists, who are given information in the strictest confidence and who would never divulge this information voluntarily, without consent, may be compelled to do so due to several mandatory reporting obligations imposed upon such professionals by Ontario law, by a judge in a court of law, or in the course of other legal proceedings.
- 2.5 Professional codes of ethics also establish duties of confidence for professionals providing services in schools. These professionals range from teachers to social workers and psychologists. The handling and release of confidential information communicated by students is of prime importance to all of the professionals who render services in a school setting. As such, adherence to the applicable codes of ethics and standards of professional conduct provide a further method whereby confidentiality is maintained regarding the data contained in school records and other information provided by students.

- 2.6 Confidentiality may not be maintained in situations that involve serious and/or imminent personal risks or dangers to a student or others, including suicide, threats of violence, and/or compelling circumstances affecting the health or safety of an individual, such as pregnancy and/or abortion.
- 2.7 The student will be counselled to inform his or her parent(s)/guardian(s) and to seek appropriate medical care. In the event that the student is unwilling or unable to inform his or her parent(s)/guardian(s), in appropriate circumstances, the parent(s)/guardian(s) will be informed by school and/or Board personnel. If necessary and appropriate, police will be contacted as the safety of students is paramount.

The methods, circumstances, and timing of informing parent(s)/guardian(s) will be reached through a collaborative approach that may include school administration, guidance, chaplaincy leader, or psychologist. In each circumstance, the appropriate persons will be gathered to ensure support is offered while informing the fewest number of people possible of the sensitive information. The professionals will monitor the situation, if requested, and offer support to the student and his or her family.

- 2.8 Where a school administrator interviews a student as part of a school investigation, the administrator should inform the student that the contents of the interview will be kept in confidence, subject to the school's ability to conduct a full and thorough investigation. It is necessary to provide an accused student with information about the allegations made against him or her in order to give him or her an opportunity to respond. Where a school administrator is in doubt about whether or not he or she has an obligation to disclose information that has been communicated in confidence, the administrator should consult with the relevant superintendent of schools.

Mandatory Reporting Obligations

- 2.9 The principal has an obligation to report a student to the Medical Officer of Health in the Health District in which the school is located if the principal is of the opinion the student has or may have a communicable disease. The principal must make this report as soon as possible after forming the opinion that the student has or may have the communicable disease.

- 2.10 To ensure this obligation is met, all staff who have information that a student is or may be suffering from a communicable disease must report that information to the school principal. The principal will evaluate the circumstances and consider if the information fits within the mandatory reporting obligation. If there is uncertainty as to whether a particular disease fits within the mandatory reporting obligation, the principal may consult with the Medical Officer of Health on an anonymous basis or consult the current requirements under the *Health Protection and Promotion Act*.
- 2.11 The staff member involved, the principal, and others if strictly necessary, will decide how best to manage the risk presented by the possible presence of a communicable disease. The principal, or a delegate, will advise the student and in appropriate cases the student's parent or guardian of the fact a report has been made to the Medical Officer of Health. The principal will determine, in consultation with the Medical Officer of Health if appropriate, whether any other persons need to be aware of the information and whether any measures ought to be taken within the school community to prevent the spread of the disease.
- 2.12 Where a staff member is concerned about other serious and/or imminent personal risks or dangers to a student or others, he or she will discuss and formally document the circumstances with relevant school or Board personnel. If the risk of harm is sufficiently serious and imminent, police are to be contacted. If circumstances permit, the student may be encouraged and supported to share relevant information with his/her parent(s)/guardian(s) and, where applicable, the situation may be referred to Special Education Services personnel responsible for the school and the relevant superintendent of schools.
- 2.13 All staff are subject to the mandatory reporting obligations in the *Child and Family Services Act ("CFSA")*. This law requires all persons who perform a professional or official duties with respect to children to report to the Children's Aid Society if the person has reasonable grounds to suspect that a child is in need of protection.
- 2.14 The child protection provisions of the legislation apply to children under the age of 16.
- 2.15 The CFSA contains a complete list of concerns which meet the criteria for mandatory reporting. Examples of concerns requiring a report include: child abuse, sexual abuse, and sexual exploitation for the purposes of creating pornography, neglect causing harm to the child, and

abandonment. This list is not exhaustive and it is imperative that the CFSA be consulted if there is any concern that confidential information disclosed to a staff member fits the mandatory reporting obligations of the CFSA.

- 2.16 The reporting obligation rests upon the staff person who obtains the information. This obligation cannot be passed on to others. However, it is appropriate to consult with the principal regarding the situation. It is appropriate for the staff member to seek direction regarding the reporting requirements and to develop with the principal, and other professionals if appropriate, a strategy for safely managing the situation for the student and family. In some cases it may be appropriate to advise the student and his or her parents of the fact that a report to the Children's Aid Society has been made. In other circumstances, the Children's Aid Society may request that this disclosure not be made until the matter is investigated.
- 2.17 It is important to note that all staff, including principals, teachers, social workers, family counsellors and religious officials, including priests, are subject to the mandatory reporting obligations under the CFSA. It is an offence under that Act not to report suspicions that a child is in need of protection within the meaning of the CFSA provided the information came to the person in the performance of one's professional or official duties.
- 2.18 Where a staff member is in doubt about whether or not he/she has a professional obligation to disclose information that has been communicated in confidence by a student, the staff member should consult with the principal and/or the superintendent of schools. In certain circumstances, the Board's legal advisor may be consulted with the approval of the Director of Education.
- 2.19 Staff who make a mandatory report of confidential information are required to document the matter clearly for the student's record. The documentation should record the following: to whom a report was made, what information was disclosed, why the information was disclosed, who else is aware that the information was disclosed and any strategies adopted for managing the consequences of the disclosure for the student, the family or others in the school community. If advice was obtained from legal counsel or from any other source before a decision to report was made then the substance of this advice ought to be recorded as well.

3.0 MUNICIPAL FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT (“MFIPPA”)

- 3.1 The MFIPPA is divided into two parts, each serving a distinct purpose. In the context of a school, these purposes are:
- to provide the public with the right of access to information in the possession and control of a school board; and
 - to protect the privacy of individuals, such as students, with regard to personal information about themselves which is held by a school or school board.
- 3.2 The MFIPPA establishes a right of access to existing “records” in the custody or under the control of an institution. The term “record” is defined in the MFIPPA to include any record of information however recorded. It includes correspondence, minutes, reports, photographs and computer tapes and any other recorded information regardless of medium or format.
- 3.3 An access request under this legislation only applies to records or recorded information in the custody or under the control of the school board. An access request does not apply to any oral comments, discussions or deliberations.
- 3.4 Under the MFIPPA, an individual has a *prima facie* right of access to any “personal information” about himself or herself in the custody or under the control of the school board. “Personal information” is defined as recorded information about an identifiable individual, including information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or the views or opinions of another individual about the individual.
- 3.5 The MFIPPA provides that a person with lawful custody of an individual under 16 years of age may exercise any right or power conferred on an individual by the Act. In this regard, a parent or guardian has the right to access personal information pertaining to student who is under 16 years of age, which is in the school board’s possession.
- 3.6 All records containing personal information must be retained for the shorter of one year after use or the period set out in a resolution made by the school board.

- 3.7 Notwithstanding an individual's general right of access to personal information, there is a broad range of exemptions where information need not be disclosed. For example, the MFIPPA provides that an institution shall not disclose personal information in its custody or under its control except:
- if the person to whom the information relates has identified that information in particular and consented to its disclosure;
 - for the purpose for which it was obtained or compiled or for a consistent purpose;
 - if disclosure is to an institution or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement agency proceeding or from which a law enforcement proceeding is likely to result; or
 - in compelling circumstances affecting the health or safety of an individual if upon disclosure notification is mailed to the last known address of the individual to whom the information relates.

4.0 EDUCATION ACT

- 4.1 The *Ontario Student Record (OSR) Guideline 2000* (the "Guideline") sets out the policies of the Ministry of Education with regard to the establishment, maintenance, use, retentions, transfer and disposal of the OSR.
- 4.2 An OSR is to be established for each student who enrolls in a school operated by a school board or the Ministry of Education. The Guideline provides that each student and the parent(s) of a student who is not an adult must be informed of the purpose and content of the OSR at the time of enrolment. The OSR is an ongoing record and will be transferred, under the terms set out in the Guideline, in circumstances where a student transfers to another school in Ontario.
- 4.3 The contents of the OSR are outlined in the Guideline. Each OSR should consist of several components, including biographical information, transcripts, report cards, health information, photographs, standardized or specialized testing results, court documentation on custody and access arrangements, and suspension letters regarding incidents of violence. A

principal may also place in the OSR any information which may be beneficial to teachers in the instruction of the pupil.

- 4.4 Principals and teachers have an additional duty under the *Education Act* to maintain the private nature of the information contained in the OSR. Section 266(10) of the Act requires that an educator “preserve secrecy in respect of the content of a record that comes to the person’s knowledge in the course of his or her duties.” No person may communicate such knowledge to any other person except as may be required by his or her duties, or with the written consent of the parent or guardian where the student is a minor, or with the written consent of the student where the student is an adult. For the purposes of the Act, a student is considered a minor where he or she is under the age of 18.

- 4.5 Section 34 of the Guideline provides:

Access to an OSR means the right of those persons authorized by the *Education Act* or other legislation to examine the contents of the OSR. In addition, municipal and provincial freedom of information legislation permits persons who have the right to have access to personal information to receive copies of the information.

Under the provisions of section 266(3) of the *Education Act*, every student has the right to have access to his or her OSR. The Act provides that parents of a student have the right to have access to the student’s OSR, until the student becomes an adult. Under both the *Children’s Law Reform Act* and the *Divorce Act*, the legal right of a non-custodial parent to have access to a child includes the right to make inquiries and be given information concerning the child’s health, education and welfare.

- 4.6 Section 266(2) of the *Education Act* provides that only supervisory officers, the principal and teachers at the school have access to the OSR for the purpose of improving the instruction of the student. For practical purposes in a school, this restriction also means that persons such as parent volunteers and elected school council members are prevented from accessing information in an OSR without proper written consent.

5.0 YOUTH CRIMINAL JUSTICE ACT

- 5.1 The *Youth Criminal Justice Act* (“YCJA”) protects the privacy and identity of young persons. Young persons are individuals who are 12 years or older but less than 18 years old. Subject to certain exceptions, the YCJA prohibits all persons, including police, youth courts and school board officials, from publishing the name of a young person, or any other information related to a young person, if that information would identify the individual as a young person dealt with under the Act.
- 5.2 Section 110(1) of the YCJA bans the publication of any information which could identify a young person who has been charged with an offence. Records, including police records, of an offence committed or alleged to have been committed by a young person are not to be disclosed unless authorized by the Act.

This does not prevent:

- disclosure to ensure the safety of staff, students or other persons;
- disclosure pursuant to a court order;
- disclosure to facilitate the rehabilitation of a young person;
- disclosure where a young person is released on a “reintegration leave” from a youth custody facility to attend school;
- disclosure relating to information of a young person who has received an adult sentence; or
- principals from suspending students for the reasons set out in the *Education Act*.

In addition, it does not prohibit school boards from exercising their right to hear a suspension appeal or convene an expulsion hearing regarding a student. In each of these cases, evidence of the events may be presented despite the existence of YCJA proceedings.

- 5.3 Section 125(6) of the YCJA deals with a possible access request to court records by school administrators. It provides that the provincial director, a youth worker, the Attorney General, a peace officer or any other person engaged in the provision of services to young persons may disclose to a representative of a school board or school any information contained in a

record if the disclosure is necessary to ensure the safety of staff, students or other persons. Schools may also use such information to monitor a young person's compliance with bail, probation or release conditions.

- 5.4 Upon receiving the information, the school is required keep the information separate from any other record of the young person to whom the information relates (to ensure that no one else has access to the record unless disclosure is necessary to ensure the safety of staff, students or others) and to destroy the information when it is no longer required.

6.0 TERMS AND DEFINITIONS

6.1 COMMUNICATIONS

Communications refers to those communications of a personal and sensitive nature which originate from students to staff members, and in respect of which there is an expectation, either implied or expressed by the student, that the communications be held in confidence.

6.2 SEAL OF CONFESSION

Seal of Confession refers to the injunction placed on a priest to maintain absolute silence about matters discussed within the Sacrament of Reconciliation, except when disclosure is required by law.

7.0 REFERENCES/RELATED DOCUMENTS

Municipal Freedom of Information and Protection of Privacy Act
Child and Family Services Act
Health Protection and Promotion Act
Communications Department for "The Advocate" - the O.A.S.B.O.'s Newsletter
Student Personal Information - A Guide to the M.F.I.P.P.A. and the Release of Students' Personal Information

8.0 RELATED ADMINISTRATIVE PROCEDURES

9.0 RELATED FORMS

10.0 ADMINISTRATIVE PROCEDURE REVIEW DATE

November 2014

11.0 APPROVED BY BOARD

September 26, 2006

12.0 EFFECTIVE DATE

November 3, 2009

13.0 REVIEW BY

Communication Services

14.0 LAST REVISION DATE

November 3, 2009