

NIPISSING-PARRY SOUND CATHOLIC DISTRICT SCHOOL BOARD

PROTECTION OF AND ACCESS TO PERSONAL INFORMATION OF STUDENTS INCLUDING OSRS

AS 29.0
Section Q
June 2014

PREAMBLE

1. The fundamental position of the Board is as follows: to fulfill its obligations regarding the protection of and access to personal information of its students.
 2. Pursuant to the above aim, the Board believes in the principle of confidentiality of personal information pertaining to its students, subject to powers of the Courts to compel the production of such documents.
 3. Personal information may only be obtained as authorized in the Act and used for the specific purposes for which it is gathered. The management and safekeeping of such information is the responsibility of each designated employee. Confidentiality must be protected by each employee who is authorized to have access to this information for purposes such as personal educational program management, the provision of various educational services or administrative maintenance of the files.
 4. Access to and/or copies of a student's personal information can be gained upon appointment during normal hours and is available to:
 - a) all students;
 - b) the student who is 16 or older or his/her agent with the specific written consent of the student;
 - c) the parent(s) or guardian(s) of a student who is less than 16 years of age or their agent with the specific written consent of the parent(s) or guardian(s);
 - d) the parent(s) or guardian(s) of a student who is 16 or older, with the specific written consent of the student;
 - e) supervisory officers, the principal and teachers of the student, para-professionals only with written consent from the 16 or older student or the parent(s)/guardian(s) of a student who is not 16 or older, and designated school office staff for administrative purposes only;
 - f) central administrative staff involved in the administration of a student records microfilming program or any other records retention program.
- Note: In addition, under the Education Act, parents also have a right of access to their child's OSR if the child is under 18.
5. Each file shall be maintained in a comprehensible manner and shall contain a record of those employees who have had access to it, that would usually not have access.

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6. Any specific personal or sensitive personal information on students shall be provided to the members of the Board only through the Director of Education, if required as part of the Trustees’ decision-making function. Any information provided shall be supplied strictly in accordance with the Act.
7. Any personal information of a student that is no longer required for administrative purposes and its retention is not regulated by any statute, may be destroyed in a confidential manner (i.e. shredding).
8. For the implementation of this policy, “A Guide to Ontario Legislation covering the release of Students’ Personal Information” will be strictly followed.

OVERVIEW

Freedom of information and protection of privacy are important issues in a school context. In the course of carrying out their duties under the *Education Act*, principals and vice-principals gather, generate and retain a great deal of information regarding their students. This information is often very sensitive and may include facts regarding a student’s academic performance, conduct, health, family status and residence.

In the context of student discipline, the OSR may include, where applicable, a suspension or expulsion record form or a violent incident form. These may contain:

- a description of the incident;
- a reference to the school disciplinary response to the incident, if applicable; and
- a copy of the school board’s letter to the student and/or parents or guardians regarding the suspension or expulsion.

Under the *Education Act*, a principal is responsible for collecting information for inclusion in a student’s record. The Ontario Student Record (“OSR”) is the record of a student’s educational progress through schools in Ontario. The Act regulates access to an OSR and states that the OSR is “privileged for the information and use of supervisory officers and the principal and teachers of the school for the improvement of instruction” of the student.

School authorities may also collect information regarding students which is not maintained in their OSR. In this regard, the law places restrictions on what information can be collected or stored and under what conditions it may be used or disclosed to students, their parents or third parties. The law of confidentiality protects this expectation and relates to whether, and under what conditions, persons holding information may voluntarily disclose such information to third parties where it was communicated in confidence, or obtained with the expectation of confidence. Although the right to privacy is at the forefront of confidentiality legislation, there may be circumstances where the law will compel the disclosure of confidential information in the course of legal proceedings.

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Ontario Student Record

The *Education Act* provides the legislative authority for the collection and use of information contained in the OSR. According to section 265(d) of the *Education Act*, the principal of the school must collect information “for inclusion in a record in respect of each pupil enrolled in the school and to establish, maintain, retain, transfer and dispose of record”. In addition to the requirements set out in the *Education Act*, the *Ontario Student Record (OSR) Guideline, 2000* (the “Guideline”), also sets out the policy of the Ministry of Education with regard to the establishment, maintenance, use, retention, transfer and disposal of an OSR.

The Guideline provides that an OSR must be established for each student who enrolls in a school operated by a school board or the Ministry of Education. Each student and the parents of a student who is not an adult must be informed of the purpose and content of the OSR at the time of enrolment.

Each OSR should consist of several components, including the biographical information of a student, transcripts, report cards, health information, photographs, standardized or specialized testing results as well as court documentation on custody and access arrangements. A principal may also include in the OSR any information which may be beneficial to teachers in the instruction of the pupil. However, relevant case law provides that there are restrictions regarding the type of information to be included in a student’s OSR.

ACCESS TO THE OSR

Section 4 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.

The use of and access to the OSR is governed by section 266 of the *Education Act*. Under the Act, every student, and his or her parent or guardian where the student is a minor, has the right to have access to the student’s OSR.

Principals and teachers have a duty under the *Education Act* to maintain the private nature of the information contained in the OSR. Section 266(10) of the *Education Act* requires that every person shall “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”. An individual with knowledge of a student’s record is, therefore, not permitted to communicate any such information to any other person without the written permission of the adult student or the parent or guardian of the student if under the age of 18.

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The *Education Act* specifically addresses the use of the OSR in cases of student discipline. The Act does not prevent the use of a record in respect of a student by either the principal of the school attended by the student or the school board for the purposes of a disciplinary proceeding instituted by the principal in respect of conduct for which the student is responsible to the principal. In this regard, the Act specifically authorizes a principal to use documents in a student's OSR for the purpose of a disciplinary proceedings.

Due to the sensitive nature of the information contained within each OSR, there are a number of guidelines which may assist to ensure the security of such information. Principals should ensure that:

- each OSR is maintained in a secure area or lockable filing cabinet;
- there is a regular review of the OSR for the removal of any material that is no longer considered to be conducive to the improvement of the instruction of the student; and
- upon the disposal of the OSR, a principal completely and confidentially disposes of material removed.

Despite the fact that there is a stringent requirement that the information held in a student's OSR be kept confidential, like everything else, there are exceptions to the rule. Section 266 of the *Education Act* provides that contents of a student's OSR may be disclosed without the written permission of the adult pupil or the parent or guardian of a minor pupil:

- for the improvement of the instruction of the pupil by supervisory officers, principals and teachers at the school (section 266(2)). 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;
- as evidence to prove its existence, establishment, maintenance, retention or transfer (section 266(2)(b)). Written permission of the parent or guardian of the student or, where the student is an adult, the written permission of the student is required for the record to be admitted in evidence for any other purpose at a trial, inquest, inquiry, examination, hearing or other proceeding;
- to provide the medical officer of health serving the school area with information in respect of a pupil (section 266(2.1));
- at a hearing to determine the accuracy of recorded information where inaccuracy is alleged by a pupil, parent or guardian (section 266(5));
- to assist the principal in the preparation of reports required under the *Education Act* or its regulations (section 266(6)(a));
- where information is required by the Minister of Education or the school board (section 266(7));
- for the purposes of a disciplinary proceeding instituted by the principal in respect of a student's conduct (section 266(13)); and
- to comply with a court order requiring the principal to produce the OSR for inspection and copying by a children's aid society in cases of child abuse.

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<p>It is important to note that the information from an OSR may be used by the principal to assist in the preparation of a report required under the <i>Education Act</i> or its regulations. Further, upon the receipt of a written request by an adult student, a former student or the parent or guardian of a student (if under the age of 18), information from an OSR may be used in the preparation of a report for an application for further education or an application for employment.</p> <p>Civil Proceedings</p> <p>A principal may be served with a subpoena requiring that he or she appear in court on a particular date and bring part or all of an OSR. Such civil cases could involve personal injury, divorce or custody disputes. In any of these situations, an adult student, or parent or guardian (where the student is under the age of 18), may provide written permission to make the record available. Where a subpoena to produce the record is received but the adult student or the parent or guardian does not consent to its release, the school should refrain from releasing the OSR until a court order is obtained.</p> <p>As a general rule, the principal should go to the court with both the original OSR and a complete and exact photocopy of it, and should propose to the judge that the photocopy be submitted instead of the original). The principal should also inform the judge that the subpoena is inconsistent with section 266(2) of the <i>Education Act</i>. The principal must, however, release the documents if ordered do so by the judge.</p> <p>Criminal Proceedings</p> <p>In criminal matters, the provisions of the <i>Education Act</i> are less effective protecting the privacy of student records. This is due to the fact that the <i>Criminal Code</i> and the <i>Canada Evidence Act</i> which govern criminal matters and are both federal statutes, take precedence over the <i>Education Act</i>, which is provincial legislation. The federally legislated summons provisions prevail over the provisions of the <i>Education Act</i> dealing with access to student records.</p> <p>If a principal is served with a search warrant under the <i>Criminal Code</i> requiring the surrender of an OSR to the police, or is served with a subpoena requiring his or her attendance at court with the OSR, he or she is obliged to comply. In both cases, the principal should obtain legal advice from the school board's legal counsel about any relevant issues. Again, the principal should inform the relevant authority that use of any parts of the OSR as evidence in a court proceeding is inconsistent with section 266(2) of the <i>Education Act</i>. The principal should also present the police or the judge with both the original OSR and a complete and exact photocopy of it and suggest that the copy be submitted instead of the original.</p>	

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<p>Overall, the following are guidelines the principal should consider if served with a summons or subpoena:</p> <ul style="list-style-type: none"> • Under section 266 of the <i>Education Act</i> the documents contained in a student's OSR are privileged for the information and use of teachers, principals and supervisory officers of the school. • Where an adult student or his or her parent or guardian (where the pupil is under the age of 18) provides written consent to make a record contained in the OSR available, it may be released to such student, parent or guardian. • A normal summons or subpoena requires the principal to come to court (and, if so specified, to bring documents). It does not authorize or compel the principal to give information or hand documents to defence counsel, the Crown or a third party out of court. • The principal should be prepared to attend court (or have a representative attend court) on the date and time set out in the subpoena. • When asked to bring an OSR to court, the principal should make a copy of the record and take both the original and the copy to court, and then propose that the photocopy be submitted to the court instead of the original. <p>The school board lawyer should be contacted with respect to disclosure requirements and court procedure. Solicitor-client privilege protects the information and advice exchanged between the educator and the board lawyer.</p> <p>Transfer of the OSR</p> <p>The OSR is an ongoing record and is transferable upon a student's move to another school. Upon a transfer of a student to another school in Ontario, the receiving school must be sent written notification of the student's transfer indicating that his or her OSR will be sent upon receipt of an official written request. A student's original OSR cannot be transferred outside of Ontario.</p> <p>When a student transfers to another school outside of Ontario, the Guideline provides that a copy of the OSR may be sent to the new school only after the principal who is responsible for the OSR has received:</p> <ul style="list-style-type: none"> • a written request for the information from the principal of the education institution outside of Ontario; and • a written statement indicating consent to the transfer, signed by the parent or guardian of the student if he or she is not an adult, or by the student over the age of 18. 	

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<p>Under the Guideline, a student is deemed to have “retired” from school when he or she ceases to be enrolled in school. In circumstances where a student does in fact retire from the school which maintained his or her OSR, the principal should provide the parent or guardian of the student, if he or she is not an adult, or to an adult student with:</p> <ul style="list-style-type: none"> • an up-to-date copy of the student’s Ontario Student Transcript; and • the information and materials stored in the OSR folder which are not required to be retained under the retention schedule. <p>The retention schedule set out in section 8 of the Guideline provides the following components of the OSR must be retained for five years after a student retires from school:</p> <ul style="list-style-type: none"> • report cards; • the documentation file; and • additional information identified by the school board as appropriate for retention. <p>The following components of the OSR must be retained for 55 years after a student retires from school:</p> <ul style="list-style-type: none"> • the OSR folder; • the Ontario Student Transcript; and • the office index card. <p>Correction or Removal of Information in the OSR</p> <p>Section 266(4) of the <i>Education Act</i> permits a student and his or her parent or guardian to take steps towards correcting or removing information in the OSR. If, in the opinion of the adult pupil, or the parent or guardian of a pupil under the age of 18, the OSR contains information which is inaccurately recorded or is not conducive to the improvement of instruction of the pupil, the pupil or parent may make a written request to the principal to correct the alleged inaccuracy or to remove the information from the record. If the principal agrees with the request, the material will be corrected or will be removed from the file and destroyed or returned to the adult student or the parent or guardian of the student as the case may be. No record of the request is to be kept in the OSR.</p> <p>If the principal refuses to comply with the request to correct or remove information, the Act provides additional procedures for the parent or adult student. The student or parent may request in writing that the principal refer the request to the appropriate supervisory officer. The supervisory officer will either require that the principal comply with the request or submit the OSR as well as the request to a person designated by the Minister of Education. In the event that the supervisory officer requires that the principal comply, no record of the request will be retained in the OSR.</p>	

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Where the supervisory officer submits the request to a person designated by the Minister, that person will hold a hearing which will be attended by the principal and the person who made the request. Following the hearing, a decision will be made by a person designated by the Minister. This decision is final and binding. If the person designated by the Minister requires that the principal comply with the request, no record of the request will be retained in the OSR. If the person designated by the Minister denies the request, the original request, including the date on which it was made, and the statement of final decision will be retained in the documentation file.

Violence-Free Schools Policy, 1994

The *Violence-Free Schools Policy*, (the “Policy”) issued by the Ministry of Education and Training in 1994 requires that information relating to serious incidents leading to reports to police, as well as information relating to serious incidents leading to suspension or expulsion, be maintained in a student’s OSR. This information is to be recorded on the Ministry’s violent incident form.

In particular, the Policy provides that a violent incident form containing the following information will be included in the OSR:

- a description of the serious violent incident leading to the suspension or expulsion or call to the police,
- a reference to the call to the police, if applicable;
- a reference to the school/board disciplinary response to the incident, if applicable; and
- a copy of the school board’s letter(s) to the student and/or parent or guardian regarding the suspension or expulsion for violent behaviour.

The Policy further specifies particular circumstances under which the above information can be removed from the OSR. Removal of information relating to suspension for violent behaviour or expulsion is permitted:

- in the case of suspension for violent behaviour, after three consecutive years have passed during which no further suspensions for serious violent incidents have taken place;
- in the case of expulsion, five years after the date on which the school board expelled the student;
- in the case where an expelled student was readmitted to school by a school board, and expelled again, after five consecutive years have passed without any further expulsion; and
- in the case where a student has not been suspended or expelled, the violent incident form shall be removed after three years if no further serious violent incident is reported to the police during that time.

If the student transfers to another school, the information in the OSR relating to the serious violent incident that led to suspension or expulsion, as well as to a report to the police, will remain in the OSR unless removed in accordance with the directions set out above.

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Municipal Freedom Of Information And Protection Of Privacy Act

In addition to the privacy provisions of the *Education Act*, as leaders of public institutions, educators must also comply with privacy legislation of a more general application, such as the *Municipal Freedom of Information and Protection of Privacy Act* (the “MFIPPA”). The MFIPPA governs the use, collection and storage of personal information by municipalities, school boards and many other agencies.

Provided that it is permitted by the provisions of the MFIPPA, educators can, and often do, collect and retain information about a student which does not form part of that student’s OSR. For example, with respect to a violent incident that is school related, while the suspension or expulsion record form and violent incident form are required to be kept in the student’s OSR, a principal’s interview notes and witness statements will generally be kept in a file outside the OSR. This information will not be subject to the restrictions of the *Education Act*, but will be managed in accordance with the MFIPPA. Although the *Education Act* does not affect records outside of a student’s OSR, the MFIPPA places restrictions on the use of other information which may be collected and retained by school personnel.

The MFIPPA is divided into main parts, each serving a distinct purpose. In the context of a school, these purposes are:

- to provide the public with a right of access to information in the possession of a school board; and
- to protect the privacy of individuals, such as students, teachers or principals, with regard to personal information about themselves which is held by a school or school board.

The MFIPPA establishes a right of access to existing public “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. An access request under this legislation would only apply to records or recorded information in the custody or under the control of a school board. Therefore, it is important to recognize that an access request would not apply to any oral comments, discussions or deliberations. A principal’s written notes made at a meeting or interview or in the context of a school investigation will, in most cases, be considered a record within the meaning of the MFIPPA. As with records in the OSR, student and parents will have a right to renew these notes where they contain personal information pertaining in the student and where they are specific and identifiable.

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<p>Under the MFIPPA, any person may make a request for information held by a school board. The MFIPPA sets out a procedure for handling such requests. Requests for information are made to “heads” of institutions. The head is responsible for administering the MFIPPA and complying with the access and privacy provisions of the legislation. The duties of a head include responding to access requests, adhering to time limits and notice requirements~ and making decisions about the disclosure of records, Most school boards in Ontario have designated the chairperson of the board as the head, nod he or she in turn has delegated certain powers and duties to the director of education and other board officials. The decisions of the head are subject to independent review by the Information and Privacy Commissioner.</p> <p>A request must be made in writing and an individual making such a request must provide sufficient detail to enable an experienced employee to locate the record. The access scheme in the MFIPPA sets out specific time limits — usually 30 days — within which institutions must respond to requests for access to information. In addition, a school board must have information available which describes how the board is organized and is general responsibilities. Furthermore, the school board must provide a list of the general classes or types of records in its custody or control.</p> <p>Personal Information</p> <p>Under the MFIPPA, an individual has a prima fade right of access to any “personal information” about himself or herself in the custody or under the control of an institution with respect to which the individual is able to provide sufficient specific information to make it reasonably retrievable by the institution. 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.</p> <p>“Personal information” is defined in the MFIPPA as recorded information about an identifiable individual. Such personal information can include recorded views or opinions of a student about other individuals. However, as indicated above, the MFIPPA does not apply to oral comments, discussions or deliberations.</p> <p>Board employees, including principals and vice-principals, must be careful not to disclose personal information relating to any individual. Generally, personal information related to students may not be disclosed except in specific circumstances.</p> <p>Section 32 of the MFIPPA establishes circumstances when a principal or vice-principal may disclose a record or other personal information. The most relevant exemption for principals and vice-principals an:</p> <ul style="list-style-type: none"> • 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 for a consistent purpose; 	

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- if the disclosure is made to an officer or employee of the school board;
- who needs the record in the performance of his or her duties and if disclosure is necessary and proper in the discharge of the school board's function;
- for the purpose of complying with an Act of the Legislature or an Act of Parliament;
- to an institution or a law enforcement agency in Canada to aid in an investigation with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- in compelling circumstances affecting the health and safety of an individual if upon disclosure notification is mailed to the last known address of the individual to whom the information relates; and
- in compassionate circumstances, to facilitate contact with the next of kin or a friend of an individual who is injured, ill or deceased.

As indicated above, the Act expressly permits a school or school board to disclose confidential information to the police to aid in an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result.

Accordingly, since principals and teachers are permitted to share information with police in certain circumstances, in non-urgent situations, the police should be prepared to provide a written statement that the identified information is required by the police to aid in an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result.

It should also be noted that this exemption permits disclosure; it does not compel disclosure. A school board may require a search warrant to be executed before access to personal information is granted. For example, in cases dealing with records in the OSR, which are privileged, a search warrant or a subpoena must be served before such records are disclosed.

School Personnel Notes

It is recognized that events occurring at school sometimes give rise to a principal, vice-principal or teacher having to appear in court or give evidence at a suspension appeal or expulsion hearing. With the passage of time, immediate recall of details of events becomes progressively more difficult. There is wisdom, therefore, in recording these events contemporaneously with the events themselves. Such details should be kept in a journal and available for reference when required. It should include dates, times, names of witnesses interviewed, relevant observations and, where appropriate, a summary of any action taken by school administration.

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Principals and vice-principals should follow a few simple guidelines when taking notes as part of an investigation:

- All records should be factual and avoid personal commentary except where required.
- All records should be objective, direct and forthright and avoid subjective comments, or innuendo or any other indirect meaning.
- To the extent possible, information contained in a record should be based on the first-hand knowledge of the record maker.
- As a rule, information in a record should not be disclosed to a third party unless the individual in charge of the record is certain that an exception under the MFIPPA permits disclosure.
- Personal notes of a principal or vice-principal should not include irrelevant or third-hand information.

Such notes made in the course of an investigation may also be used by principals and vice-principals to refresh memories in a legal proceeding. Notes which are made well after the event, are usually not helpful and can come under criticism in the course of a proceeding if a witness tries to use notes made after the fact to refresh his or her memory.

When preparing notes or other documents, it is important to be conscious of the fact that the notes or documents may ultimately be admitted in evidence before a court. A witness who takes care in preparing investigation notes or other records will likely be a more credible and reliable witness. Notes that are thorough, accurate and free of subjective judgment or opinion will assist the principal, vice-principal or teacher in providing testimony. They will also help demonstrate that the educator has conducted himself or herself in a professional manner and avoid embarrassing or undermining cross-examinations at trial. Ultimately records that demonstrate objectivity and fairness will support the conclusions and recommendations of school administration.