



DOCUMENTATION AND PERSONAL INFORMATION CONCERNING STUDENTS

Members of ETFO create and receive personal information, such as personal history, medical or family information about students in the course of their duties. This can be especially true when working with students with special needs. Such personal information sometimes takes the form of formal records but they may also take the form of notes between educators and parents, assessment notes, behaviour or observation notes or information shared verbally between colleagues, from students, parents or third parties involved in the student's education. All of this information is considered "personal information" about the student.

Whether the member created or received the information and whether it is in writing, electronic or communicated orally, that personal information is private and staff are subject to a variety of obligations concerning its collection, use, storage, disclosure and disposal. Balancing the requirements to collect and share information with the rules around privacy can be a difficult task, especially in the context of special education, where private information about a student's special needs and any medical conditions often form the foundation for ensuring that the student receives the individualized education to which he or she is entitled under the *Education Act*.

Employment Obligations

Educational staff should be aware of what policies their school boards have in place concerning privacy of personal information and what such policies require in terms of the collection, use, storage, disclosure and destruction of personal information concerning students. Failure to comply with such policies may lead to job performance or disciplinary consequences.

All boards and staff are required under the provisions of the *Education Act* to preserve the secrecy of the content of the Ontario Student Record (OSR).

Professional Obligations

Teachers, Designated Early Childhood Educators (DECEs), Education Support Personal (ESP) and Professional Support Personnel (PSPs) have professional obligations to maintain the confidentiality of all information about a student, not just information found in the OSR. The Professional Misconduct regulations of both the Ontario College of Teachers and the College of Early Childhood Educators define "professional misconduct" of members to include "releasing or disclosing information about a student to a person other than the student or, if the student is a minor, the student's parent or guardian".

Privacy Legislation

Ontario's privacy legislation - composed of two different statutes, the *Freedom of Information and Protection of Privacy Act* ("FIPPA") and the *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA") - imposes specific requirements for the collection, use, distribution and storage of personal information. This legislation mandates school boards, school administrators, teachers, DECEs, ESPs and PSPs to follow certain rules when dealing with students' personal information.

a. Personal Information Defined

The definition of "personal information" is very broad. It covers information about an identifiable individual's education/medical/psychiatric/psychological history and any records containing "views or opinions" about an identifiable individual. It also extends beyond this to include any "recorded information" and "non-recorded information": just asking and hearing about a student's education or medical history, or his or her accommodation needs is sufficient to trigger the protections of FIPPA or MFIPPA.

For special education staff, any special education assessments, medical reporting or notes recording the activities of a special needs student likely are covered by the definition. The legislation applies not just to what is contained in a student's OSR. It is important to remember, too, that a student does not have to be named in a piece of information for the information to be "personal information"; it is enough that the information is about a specific individual that could be identified. Using short forms or initials to refer to students in notes does not preclude the information being recorded from falling under the legislation. However, the use of short forms or initials may be a good practice for special education staff as an added measure of protection of privacy.

b. Collection and Use of Personal Information

For the collection of personal information about special needs students, principals have a general duty "to collect information for inclusion in a record in respect of each pupil enrolled in the school" set out in s. 265(1)(d) of the *Education Act*. The OSR Guideline also sets out a general requirement for the OSR to include any "information identified as being conducive to the improvement of the instruction of the student". This requirement to provide special education allows school boards to conduct assessments and testing of special needs students in order to determine appropriate educational accommodation. Note taking to document the classroom behaviours of special needs students with the aim of monitoring the accommodation of the student and to ensure that the student is receiving an appropriate education would be permissible under FIPPA and MFIPPA.



The workplace violence and harassment amendments to the *OHSA* provide legal authority for special education and school board staff to collect information about special needs students with violent tendencies. The amendments require the assessment and re-assessment of workplace violence hazards, and the provision of personal information to workers about risks of workplace violence that they might encounter.

Both *FIPPA* and *MFIPPA* require that collected information be used only for the purpose for which it was originally collected, or for a purpose consistent with that original purpose, unless the student's parent consents to the use of the information by signing a consent form. This requirement means that, even once collected, special education staff must be careful in dealing with personal information about their students. Staff should not use their notes or other information in ways that go beyond ensuring that a student is receiving an appropriate education or ensuring that a student's aggressive behaviour is documented to maintain a healthy and safe working environment.

c. Disclosure of Collected Information

FIPPA and *MFIPPA* allow school boards and their staff to disclose personal information in a variety of situations. Examples of permissible disclosure include: where the parent consents to the disclosure, where there is legal authority for the disclosure, and where the disclosure accords with the purpose for which the information was initially collected or with a consistent purpose. For special education staff, disclosure issues will most often arise when a student is transferred to another school. Disclosing special education assessments, medical reporting, and even day-to-day notes to the new school would likely comply with *FIPPA* and *MFIPPA*, so long as, even without parental consent, the disclosure is being made to continue to foster the proper education of the student, or to ensure a safe and healthy work environment for staff at the new school. Members might be contacted by outside agencies or school systems receiving transferred students. Members should seek direction from school administrators before sharing personal information about students.

Note that both *FIPPA* and *MFIPPA* permit a school board to disclose personal information to its staff where the information is necessary for the school board to fulfil its educational and occupational health and safety functions, and for the staff to do its work properly.

d. Storage of Collected Information

Boards should have policies in place about the storage of personal information, and school staff should familiarize themselves with these policies or request training on storage. The disclosure rules under both *MFIPPA* and *FIPPA* do not allow for disclosure through inadvertence or error. Educational staff should consider how notes and records that are in their possession at schools are stored: Are these notes and records accessible to other students in the classroom? Can visitors to the school access the notes and records? If staff are unsure, seek direction from the school administrator.

Records containing personal information need to be retained by the board for at least one year. This retention timeline applies not only to substantial medical reports and special needs assessments, but also to more seemingly insignificant records such as observational notes taken by school staff about a student. It is important to remember that the OSR Guideline sets out a much longer retention timeline for the contents of the OSR.

e. Liability

Under both *FIPPA* and *MFIPPA* anyone who "wilfully" discloses personal information in contravention of the statute is guilty of an offence, and may have to pay a fine of up to \$5,000. These offence provisions apply not just to school boards, but also to staff.

Best Practices

- Familiarize yourself with the policies governing your workplace.
- Familiarize yourself with the Guideline for OSRs.
- Treat all information about students as personal information deserving of protection under the legislation.
- Be aware that school boards are likely to consider any information staff create in the performance of their duties with students to be the property of the board, not the educator. Your notes about students should be maintained in a way to ensure privacy and you should be prepared for the possibility that access to such notes likely will be granted to students or their parents if requested.
- Avoid casual sharing of personal information about students, even with other colleagues. There is no umbrella protection of "we're all professionals here". Restrict the sharing of information to what is needed for the educational interests of the student, what is needed for safety of others, and what is required by law.
- Consider whether there should be a request for training of staff on these issues from the school administrator or the school board's information and privacy officer.

If you are unsure about anything to do with personal information of students, seek direction from your school administration. If you have concerns about the direction you have been given, consult your ETFO local or staff in Professional Relations Services at 416-962-3836 or 1-888-838-3836.

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