

Providing Private Instruction (Learning Pods)

Introduction

The COVID-19 pandemic has created a number of challenges as plans are developed to reopen schools for the 2020-21 school year. As a result of these challenges, some families are contemplating alternative education programs for their children including what is known as a “learning pod.” This bulletin offers some considerations for members who may be approached by parents, guardians, or other organizations to lead a learning pod and/or to provide private instruction to students during the COVID-19 pandemic.

What Are Learning Pods?

Generally, learning pods are made up of an educator and a group of students. The educator provides instruction to students independent of the students’ school. This instruction follows a delivery model that may be face-to-face (at a private residence or site), online (featuring synchronous and/or asynchronous instruction) or a combination of both. Instruction could be provided during the typical hours of an instructional day, outside of those hours, or a combination of both.

Confidentiality and Professionalism

Members should be extremely cautious about agreeing to provide instruction under such arrangements as there are numerous risks. Members are reminded of their professional obligations to maintain confidentiality as it relates to student information. As employees of school boards, members should be familiar with policies and procedures concerning privacy and the accessing and sharing of student information. Be careful about assisting parents to identify who might join such a pod. Members must also be cautious about sharing student information without having the appropriate consent.

Members should also exercise caution about communicating any criticisms related to their school board’s reopening plans, whether done through direct contact with parents, guardians, or outside organizations or through the use of social media platforms. School boards that become aware of comments made by their employees that are deemed to be unprofessional or inconsistent with board expectations of an employee may impose discipline and report to the Ontario College of Teachers (OCT) or the College of Early Childhood Educators (CECE). Parents or guardians who express concerns about the school board’s reopening plan and how this plan evolves should be directed to the school administrator.

Potential Risks

There are many risks members should assess prior to accepting this type of employment. Be aware that members who are providing instruction through learning pods or tutoring do so at their own risk and may not be eligible for ETFO support should problems arise as a result of providing private instruction.

Teaching in a learning pod is not covered by a formal employment agreement such as a collective agreement. Members who accept an informal relationship may not also have the protections provided by other forms of employment legislation. This leaves the member vulnerable.

Teaching in a learning pod, whether synchronous or not, and whether during normal instructional time or not, is still governed by the OCT. All of your professional obligations continue to apply and the OCT will investigate any complaints made in connection with this work. ETFO would not provide legal assistance to members investigated by the OCT for investigations that arise from their work instructing a learning pod.

Additionally, ETFO would not provide legal assistance for allegations involving the Children's Aid Society CAS or the police while teaching in a learning pod.

Members should make themselves aware of any relevant board policy, including policies on tutoring and/or providing private instruction. Some boards may also develop policies specifically addressing learning pods.

Members should be aware of any board policies or guidelines concerning conflict of interest. Teachers are bound by the Professional Misconduct Regulation 437/97 under the Ontario College of Teachers Act. Section 26 states that a teacher is guilty of professional misconduct when practicing the profession while in a conflict of interest. As public servants, members are held to higher standards than other employees in conflict of interest situations. Operating or teaching within a learning pod that involves students assigned to you by your board is likely to raise conflict of interest issues.

It would be inappropriate for members to advertise private instruction through connections at the school, through school or board publications or the board's computer network. Using any board property, such as classroom or library materials or as a means of media transmission, in the course of providing private instruction will be considered a conflict of interest. Directly or indirectly promoting or selling any book or other teaching materials, equipment, or other items to any pupil of your board (even if you are on leave) for compensation is a breach of the *Education Act*. There are only limited exceptions to this.

Members cannot be employed in any other capacity during times when they would otherwise be expected to be at work, regardless of whether their board assignment is at a school or offsite. Working a second job during your hours of work for the board would likely lead to termination of your board employment and a College complaint.

Members on a board approved medical leave should not accept other employment as a teacher or as a designated early childhood educator while on leave. A member who is found to be engaged in paid work while on sick leave could jeopardize their ongoing access to sick

leave and risk being accused of fraudulent use of sick leave. Engaging in teaching duties even on a volunteer basis during a sick leave can risk ongoing access to sick leave and allegations of fraud. Fraudulent sick leave claims often result in termination of employment and a report to the College.

Members who access a leave of absence (LOA) from their school board to pursue other employment opportunities should be aware of their local collective agreement language that addresses such leaves, including any restrictions on cancelling a LOA. Employment in a learning pod is not governed by the just cause protection of a collective agreement so you will need to assess the limits of job security and the limits of recourse should the learning pod be cancelled or should the parents opt to cease involving you. Members should also consider the impact of a LOA on benefits coverage and pension entitlements. Also, while you are on a LOA you are still an employee of the board and, as such, continue to have a range of employment and professional obligations.

Whether private learning pods are safe or not would depend on a range of factors. Unless your employer in a private learning pod is governed by the *Occupational Health & Safety Act*, you may have limited recourse if the working circumstances end up putting you at risk.

Members who become ill or injured through the course of delivering private instruction may not be eligible for Workplace Safety and Insurance Board benefits if the employer is not covered by workers compensation legislation. In addition, access to Long Term Disability (LTD) benefits may be impacted: for example, if you become ill during a leave of absence, benefits are generally not payable for the planned duration of that absence. If your LTD coverage was interrupted for a leave of absence, disability arising during that leave may prevent future claims and coverage entirely.

Finally, there are other issues that members would be wise to contemplate prior to undertaking any private instruction, including but not limited to: obligations related to student supervision, insurance and liability considerations, obligations under the *Education Act* for operating a private school, Ministry inspection and oversight, your statutory duties to report to the CAS, job security, and any right or not to employment insurance benefits should the private employment come to an end.

Additional Considerations

Both the OCT and the CECE have a number of publications that should be reviewed by members. Some of these include:

- [Professional Advisory: Duty to Report \(2019\)](#) (CECE)
- [Practice Note: Using Social Media \(2019\)](#) (CECE)
- [Practice Note: Ethical Decision-Making \(2019\)](#) (CECE)
- [Duty to Report - Professional Advisory](#) (OCT)
- [Maintaining Professionalism - Use of Electronic Communication and Social Media Professional Advisory](#) (OCT)
- [Video Conferencing Guidelines](#) (OCT)

It is possible that educators who have recently graduated may be considering this type of employment in lieu of securing a position with a school board. An educator who is a member of the OCT or CECE should still be aware of the relevant advisories issued by both Colleges. Members who have recently retired are advised to consult with the Ontario Teachers' Pension Plan concerning any pension implications should they accept this type of employment.

Conclusion

Be aware that concerns have also been expressed about inequities that are likely to be exacerbated by the withdrawal of students from schools to participate in private instruction. Further, defending publicly-funded education and advocating for social justice are priorities identified and approved by the membership of ETFO.

Members considering employment to deliver private instruction should be mindful of the cautions and considerations outlined above.

Additional Resources

- [PRS Matters Bulletin Vol. 28, Tutoring and Conflict of Interest - Guidelines for Members](#)
- [PRS Matters Bulletin Vol. 85, A Member's Duty to Report under the Child and Family Services Act](#)
- [PRS Matters Bulletin Vol. 82, Professionalism: Advice to Members](#)

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