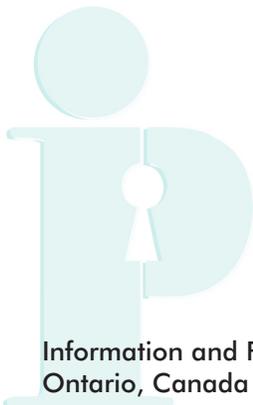
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A GUIDE TO ONTARIO LEGISLATION COVERING THE RELEASE OF STUDENTS' PERSONAL INFORMATION

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A GUIDE TO ONTARIO LEGISLATION COVERING THE RELEASE OF STUDENTS' PERSONAL INFORMATION

INTRODUCTION

School boards in Ontario operate in a complex legal environment in which various pieces of legislation must be taken into account when making determinations regarding access and privacy issues. The purpose of this paper is to provide students, parents and school board staff with a basic understanding of how the *Municipal Freedom of Information and Protection of Privacy Act* interacts with the *Education Act* and other Ontario legislation to protect privacy and provide access to the personal information of students.

APPLICABILITY OF ACCESS AND PRIVACY LEGISLATION

Governmental institutions in Ontario are governed by one of two applicable pieces of access and privacy legislation. The *Municipal Freedom of Information and Protection of Privacy Act* (the municipal Act) applies to municipal institutions, including public and separate school boards. The *Freedom of Information and Protection of Privacy Act* (the provincial Act) applies to provincial institutions, including provincial and demonstration schools operated by the Ministry of Education. Private schools are not subject to either of these Acts.

By virtue of the Acts, records that fall within the custody and control of school boards, including records of students' "personal information,"¹ are subject to the access and privacy provisions of both Acts.

With the exception of minor differences, both the municipal and provincial Acts are similar in

1 "Personal information" is defined in both the municipal Act and the provincial Act as "recorded information about an identifiable individual."

terms of the obligations they impose on institutions. While references in this paper are to the municipal *Act*, in all cases similar provisions will be found in the provincial *Act*.

HOW DO ONTARIO STATUTES OPERATE TO PROTECT THE PERSONAL INFORMATION OF STUDENTS?

The municipal *Act* sets out the general rules that school boards must follow regarding the collection, retention, use and disclosure of personal information. In contrast, the *Education Act*, which is the principal statute under which boards operate, provides rules governing the access to and disclosure from the Ontario Student Record (OSR), which is created for every student in school. Other statutes, such as the *Personal Health Information Protection Act*, the *Child and Family Services Act* and the *Occupational Health and Safety Act*, may also permit or, in some cases, require school boards to disclose limited personal information about students in certain situations.

WHAT TYPES OF PERSONAL INFORMATION DO SCHOOL BOARDS COLLECT?

Generally speaking, student records collected by school boards fall into one of two main categories: records that form part of the Ontario Student Record (OSR) and records that do not form part of the OSR. The municipal *Act* applies to both types of records.

All public and separate school boards are required to create an OSR for each student. Other schools, including private and First Nations schools *may* elect to establish and maintain an OSR.

The OSR is the record of a student's educational progress through the school system in Ontario. The Ministry of Education's *Ontario Student Record (OSR) Guideline, 2000*² (the *OSR Guideline*) sets out the types of records that are to be contained in a student's OSR. They are: an OSR folder, all student report cards, an Ontario Student Transcript (where applicable), a documentation file (where applicable), an office index card and any additional information identified by the principal as being conducive to the improvement of the instruction of the student.

In addition to the information collected in a student's OSR, school boards may collect other forms of personal information that then become subject to the municipal *Act*. Examples of non-OSR records include such things as: permission slips allowing students to attend field trips, class lists, records of marks for tests and assignments, yearbook photographs of students with their names, and honour rolls.

2 The *OSR Guideline* is available online at: <http://www.edu.gov.on.ca/eng/document/curricul/osr/osr.html>.

ARE SCHOOL BOARDS REQUIRED TO KEEP OSRS CONFIDENTIAL?

Yes, by virtue of section 266(10) of the *Education Act* and section 32 of the municipal *Act*, school boards are required to keep OSRs confidential. They may only be disclosed in accordance with one of the specific situations contemplated by either that section of the *Education Act* (see Appendix A) or section 32 of the municipal *Act* (see Appendix B). The issue of disclosure is dealt with in greater depth on page 5.

DOES THE MUNICIPAL ACT LIMIT THE AMOUNT OR KIND OF PERSONAL INFORMATION A SCHOOL BOARD MAY COLLECT?

Yes. To be in compliance with the municipal *Act*, school boards must possess the requisite legal authority to collect personal information. Section 28(2) of the municipal *Act* sets out the three circumstances under which personal information may be collected on behalf of institutions that are subject to the *Act*. The collection of personal information must either be: (1) expressly authorized by statute (i.e., provided for by an *Act* or a regulation under an *Act*); (2) used for the purposes of law enforcement (as defined in the municipal *Act*); or, (3) necessary to the proper administration of a lawfully authorized activity. A school board may not collect personal information unless one of these three circumstances applies.

Generally, the collection of personal information by a school board is authorized by virtue of section 265(1)(d) of the *Education Act*, which states it is the duty of a principal to collect information for inclusion in a record about the student. The information must be collected in accordance with the *Education Act* and the Regulations and Guidelines made under the *Education Act*. Generally, the *OSR Guideline* permits the collection of information for purposes that are conducive to the education of the student (see Appendix C). Therefore, a collection of personal information that is not generally conducive to the instruction and other education of a student (such as information on the personal political views of the student) would not be authorized under the *Education Act*.

However, even if a collection of personal information is not authorized under the *Education Act*, it may be justified under one of the other circumstances contemplated by section 28(2) of the municipal *Act* (i.e., law enforcement or lawfully authorized activity).

DOES A SCHOOL BOARD NEED STUDENT OR PARENTAL CONSENT TO COLLECT PERSONAL INFORMATION ABOUT A STUDENT?

Where a board possesses the legal authority to collect personal information, and it is collecting the information directly from the student or parents, the school board does not require formal consent for the collection. Consent would be implied by the fact that the information is being provided directly to the school board.

CAN A SCHOOL BOARD COLLECT PERSONAL INFORMATION ABOUT A STUDENT FROM OTHER SOURCES?

A collection of personal information from a source other than the student or the student's parents is called an *indirect collection*. As with direct collection, the school board must possess the legal authority to collect this personal information. Section 29(1) of the municipal *Act* sets out the situations in which indirect collection of personal information is permitted. The most common of these situations occurs where the individual consents to the collection (e.g., where parents consent to a school board obtaining a report directly from a professional who has met with the child). While consent may be given either orally or in writing, it is generally advisable for school boards to seek written consent so that a written record of the consent exists.

If a school board wishes to indirectly collect the personal information of a student from a source other than the student, without consent, then one of the other circumstances set out in section 29(1) of the municipal *Act* must apply.

DOES A SCHOOL BOARD NEED TO GIVE NOTICE THAT IT IS COLLECTING PERSONAL INFORMATION?

Section 29(2) of the municipal *Act* (see Appendix B) provides that where personal information is collected on behalf of an institution, the individual must be provided with notice of the collection (which includes being informed of the legal authority for the collection; the principal purpose or purposes for which the personal information is intended to be used; and the title, business address, and business telephone number of an officer or employee who can answer questions about the collection). The most common way that school boards can provide a notice of collection is by printing it on the form that is used to collect the information, by including it in students' agendas, or by posting it on the school board's public website.

WHAT ARE THE RULES THAT SCHOOL BOARDS MUST FOLLOW WHEN THEY DISCLOSE A STUDENT'S PERSONAL INFORMATION?

Section 266 of the *Education Act* specifically says who is entitled to see the information in the OSR and who may not see it without the consent of the parent or adult student. For example, parents have the right to see the OSR without the student's consent until the student is 18 years old. The *OSR Guideline* goes into more detail about this issue.

Section 266(2)(b) of the *Education Act* states that the OSR is privileged and not admissible at a trial without the consent of the parent. The courts have been divided about this issue. In at least one case, a court has found that it had the discretion to use this section to deny disclosure to the Crown.³ In other cases, courts have found that section 266(2)(b) does not prevent disclosure of school records to parties in court cases.⁴

Because personal information held by a school board is also covered by the municipal *Act*, school boards are not allowed to disclose a student's personal information unless one of the circumstances set out in the disclosure provision (section 32) of the municipal *Act* applies. For example, section 32(b) of the municipal *Act* provides that the disclosure of personal information is permissible with the consent of the individual. (In cases where the individual is less than 16 years of age, consent may be obtained from a person having lawful custody of the individual.) Section 32(c) provides for the disclosure of personal information for the purpose for which it was obtained or for a consistent purpose (i.e., a purpose the student or parents would reasonably expect; and Section 32(d) permits disclosure of a student's personal information to an officer, employee, consultant or agent of the institution who needs the information in the performance of his or her duties. Section 32(d) could permit certain school board employees, such as social workers and psychologists, to have access to a student's personal information if it is necessary to the counselling process. Section 32(e) permits disclosure for the purpose of complying with an *Act* of the Legislature; and section 32(g) of the municipal *Act* states that an institution may disclose personal information to a law enforcement agency in order to aid in an investigation.

It is important to note that these provisions are *discretionary*, rather than *mandatory*. For instance, section 32(g) does not require a school board to automatically disclose information pursuant to a request from law enforcement. Rather, school board officials may choose to either disclose or not disclose information depending on the particulars of a given situation. Of course, other factors, such as the presence of a court-ordered search warrant, may preclude any such discretion on the part of the school board. School boards may find it helpful to develop policies or guidelines to assist them in exercising their discretion.

3 *R. v. Lewin*, [1991] O.J. No. 2418.

4 *Lee v. Toronto District School Board* [2008] O.J. No. 1759; *R. v. Keukens* (1995), 23 O.R. (3d) 582.

What statutes may require school boards to disclose a student's personal information?

Some statutes make it *mandatory* for school boards to disclose students' personal information. Section 32(c) of the *municipal Act* states that an institution may disclose personal information for the purpose of complying with an Act of the Legislature. This means that, in certain legislated circumstances, school boards can disclose personal information from a student's OSR, but only if the statute *requires* that disclosure.

An example of a provision of a statute that makes it mandatory to disclose students' personal information is section 266(2.1) of the *Education Act*, which requires the principal of a school to give the local medical officer of health the name, address, telephone number, and birth date of any student enrolled in the school as well as the name, address and telephone number of the student's parent, on request by the local medical officer of health.

Section 300.2 of the *Education Act* requires any employee of a school board who becomes aware that a student may have engaged in an activity for which the student could be suspended or expelled to report this to the principal. If the principal believes that a student has been harmed as a result of this activity, the principal has a duty to notify that student's parent or guardian. Section 300.3(5) provides that when notifying the parent or guardian, the principal must not disclose the name or any other identifying or personal information about the student who engaged in the harmful activity, except in so far as is necessary to explain the nature of the activity that resulted in harm to the student, the nature of the harm, and the steps taken to protect the student's safety.

In addition, section 8.1 of the *Education Act* requires schools and school boards to provide the Minister of Education with personal information for a variety of purposes, including administering and ensuring compliance with the *Education Act* and regulations, policies and guidelines made under that *Act*.

There are several other statutes that require a school board to disclose a student's information in certain situations. Sections 25(2)(a), 27(2)a and 32.0.5 of the *Occupational Health and Safety Act* require all employers, including school boards, to advise a worker of any danger to the worker's health or safety that they are aware of. This duty includes providing workers with personal information if this information relates to a risk of workplace violence to them from a person with a history of violent behaviour. Section 32.0.5(4) provides that the employer shall not disclose more personal information than is reasonably necessary to protect the worker from physical injury.

Section 72(1) of the *Child and Family Services Act* requires any person who has reasonable grounds to suspect child abuse, including individuals who perform professional or official duties with respect to children, to report this to a Children’s Aid Society.

WHAT INFORMATION MAY BE DISCLOSED IN AN EMERGENCY AND OTHER URGENT SITUATIONS?

Privacy legislation in Ontario does not prevent the rapid sharing of personal information in certain situations. While it is appropriate to recognize that personal information is protected by Ontario’s privacy and access laws, it is also important to realize that these protections are not intended to stand in the way of the disclosure of vital – and in some cases, life-saving – information in emergency or other urgent situations. In emergency and other limited situations, the head of a school board or those acting on his or her behalf, can – and in some cases must – disclose information that would normally be protected by Ontario’s access to information and privacy laws.

School board employees who are health information custodians (a term defined in the *Personal Health Information Protection Act*), such as psychologists and social workers, also may disclose personal health information in emergency situations that normally would be protected under the *PHIPA*.

For more information about what personal information may – or, in some cases, must – be disclosed to protect the health or safety of individuals or for compassionate reasons, see IPC Fact Sheet Number 7, *Disclosure of Information Permitted in Emergency or other Urgent Circumstances* and *Practice Tool for Exercising Discretion: Emergency Disclosure of Personal Information by Universities, Colleges and other Educational Institutions* on the IPC’s website, www.ipc.on.ca.

IF PERSONAL INFORMATION IS DISCLOSED IN EMERGENCY OR OTHER URGENT CIRCUMSTANCES, IS NOTICE REQUIRED?

If a student’s information is disclosed in an emergency or under other urgent circumstances, a school board may be required to give notice of the disclosure to the student. For example, if disclosure is made in compelling circumstances affecting the health or safety of an individual, section 32(h) of the municipal *Act* requires that notice of the disclosure be mailed to the individual. Notice must also be given to the individual under section 5(2) of the municipal *Act* before disclosing personal information to protect public health and safety, if it is practicable to do so.

WHAT ARE THE RULES THAT SCHOOL BOARDS MUST FOLLOW WHEN THEY USE A STUDENT'S PERSONAL INFORMATION?

As is the case with both the collection and disclosure of a student's personal information, school boards are not permitted to *use* a student's personal information unless one of the three circumstances set out in section 31 of the *municipal Act* applies. (See Appendix B.) Section 31(a) permits the use of personal information with the consent of the individual (e.g., a parent signs a consent form). Section 31(b) allows for the use of personal information for the purpose for which it was obtained or compiled, or for a consistent purpose (i.e., a purpose the parent or student would reasonably expect, such as the improvement of the instruction of the student). Section 31(c) provides that personal information may be used for a purpose for which the information may be disclosed to the school board under section 32 or under section 42 of the *provincial Act*.

HOW DOES THE *EDUCATION ACT* APPLY TO THE ONTARIO EDUCATION NUMBER?

The Ontario education number is a unique number that is assigned to each person who is enrolled in, or who seeks admission to be enrolled in, a prescribed educational or training institution. Educational and training institutions prescribed by regulation 440/01 include all school boards, all schools under the jurisdiction of a school board or the Ministry of Education, all private schools in Ontario, and all inspected private schools outside Ontario.

Section 266.2(2) of the *Education Act* authorizes the Minister of Education and prescribed educational and training institutions to collect, directly or indirectly, personal information for the purposes of assigning an Ontario education number to a student. (See Appendix A.)

Section 266.2 (3) of the *Education Act* provides that the notice provision in section 29(2) of the *municipal Act* does not apply to a collection of personal information for the purpose of assigning an Ontario education number.

Further, section 266.2 (4) of the *Education Act* permits the Minister of Education and prescribed educational and training institutions to use or disclose personal information for the purpose of assigning an Ontario education number and deems the disclosure to be for the purpose of complying with the *Education Act*.

Section 266.3 of the *Education Act* allows for Ontario education numbers to be collected, used, disclosed or produced for purposes such as the provision of educational services and for purposes related to education administration, funding, planning, or research and for providing financial assistance to students. Regulation 440/01 requires prescribed educational institutions (including school boards) to use an individual's Ontario education number in records compiled

and maintained in accordance with the *Education Act* or under policies, guidelines and directives issued by the Minister of Education relating to student records; in applications for enrolment in an educational program; and in student assessments, tests and evaluations.

The *Education Act* also states that no person shall collect, use, disclose or require the production of another person's Ontario education number, except as provided by the *Education Act*.

AT WHAT AGE CAN A CHILD EXERCISE HIS/HER PRIVACY AND ACCESS RIGHTS UNDER THE ACTS?

A child of any age has the right to exercise his or her privacy and access rights under the municipal and provincial *Acts*.

HOW IS A PARENT'S RIGHT OF ACCESS UNDER THE MUNICIPAL ACT AFFECTED BY A CHILD'S AGE?

Parents have a statutory right of access to a child's personal information under both the municipal *Act* and section 266(3) of the *Education Act*. The *Education Act* confers a right to access to a student's OSR on a parent or guardian if the child is under the age of 18.

By virtue of section 54(c) of the municipal *Act*, the rights and powers of a child under the *Act* may be exercised by any person having lawful custody of the child. This means that a parent with lawful custody of a child may consent to disclosure of a child's personal information or make a request for access to the personal information under the municipal *Act* on behalf of the child.

Irrespective of parental rights, a student of any age has the right to have access to his or her own personal information.

DO SEPARATED OR DIVORCED PARENTS OF A CHILD HAVE A RIGHT TO ACCESS THE CHILD'S SCHOOL RECORDS REGARDLESS OF WHO HAS CUSTODY OF THE CHILD?

Yes. As discussed above, section 266(3) of the *Education Act* states that the parent or guardian of a child under the age of 18 is entitled to examine the OSR. Because the applicability of this section is not limited to "custodial parents," a non-custodial parent will have the legal right to access the child's OSR.

Further, by virtue of provisions contained in section 20(5) of the provincial *Children's Law Reform Act* and in section 16(5) of the federal *Divorce Act*, a non-custodial parent who has access to a child has the right to make inquiries and to be given information concerning the child's health,

education and welfare. This applies to information in the OSR as well as information that is not in the OSR.

Although section 54(c) of the municipal *Act* only places custodial parents in the shoes of their child for the purpose of access to the child's personal information, the IPC has held that the *Children's Law Reform Act* and the *Divorce Act* operate to give an access parent the right to access the personal information relating to the health, education or welfare of the child.⁵

HOW LONG ARE SCHOOL BOARDS REQUIRED TO KEEP RECORDS OF PERSONAL INFORMATION ABOUT STUDENTS?

Section 5 of Regulation 823 under the municipal *Act* (Regulation 460 of the provincial *Act*) provides that personal information that has been used by an institution shall be retained by the institution for the shorter of one year after use or the period set out in a bylaw or resolution. Therefore, a school board is required to keep all student records for at least one year, unless a shorter retention schedule is established by means of a by-law or school board resolution or the parent (or child if over the age of sixteen) has consented to an earlier disposal.

The purpose of the minimum retention period is to allow individuals to exercise their statutory right to access and correct their own personal information under the *Acts*. The *Acts* do not specify a maximum time period beyond which the personal information of individuals cannot be retained.

The *OSR Guideline* establishes the minimum retention schedules for OSRs. The main parts of an OSR (the OSR folder, the Ontario student transcript and the office index card) are required to be retained for 55 years from the date the student leaves school. Other records in the OSR (report cards, the documentation file and additional information that is identified by a school board as appropriate for retention) must be retained for five years after the student leaves school. It is a good practice for school boards to also develop retention schedules for the other records that are not in the OSR.

CAN A PARENT OR STUDENT REQUEST THAT CERTAIN RECORDS OF PERSONAL INFORMATION BE DESTROYED OR REMOVED FROM THE OSR?

The *OSR Guideline* (in accordance with subsection 266(4)(b) of the *Education Act*) permits a parent or a student who is 18 or older to request that personal records be removed from the OSR on the basis that the information is not conducive to the improvement of the instruction of the student. If the principal refuses to do so, the matter may be referred to a supervisory officer of the school board and ultimately, the parent may request a hearing from the Ministry of

5 IPC Order M-787, June 1996.

Education. The records may either be given to the parent or student or destroyed in a confidential manner.

There are no specific provisions in the municipal *Act* that allow for the removal of records of personal information from the OSR. However, as discussed above, an individual may consent to the school board's disposal of records of personal information before the expiry of the minimum retention period. Also, as discussed below, under the *Acts*, a parent or student may request correction of inaccurate personal information in the OSR.

WHAT CAN A PARENT OR STUDENT DO IF THEY BELIEVE THERE IS AN ERROR OR OMISSION IN THE PERSONAL INFORMATION RECORDS OF THE STUDENT?

Both the provincial and municipal *Acts*, as well as the *Education Act*, have provisions that provide for the correction of an individual's personal information in school records.

Under section 266(4)(a) of the *Education Act*, the parent or guardian of a student may request the correction of the personal information contained in their child's OSR, where they believe that information to be inaccurate. Where the student is an adult, he or she may make this request directly.

The process for correction is provided in the *OSR Guideline*, which states that a parent (or an adult student) must submit a written request to the school principal. Only matters of fact, not opinion, may be corrected. If the principal refuses to correct the alleged inaccuracy, the matter may be referred to a supervisory officer of the school board and ultimately, the parent may request a hearing from the Ministry of Education.

Section 36(2) of the municipal *Act* gives individuals (including children) the right to request the correction of their own personal information that is in the custody of an institution. By virtue of section 54, which grants custodial parents the power to exercise rights under the *Act* on behalf of their children, the parent may make the request for a correction of information about his or her child. If the school board denies the request, the individual may appeal this refusal to the IPC. The IPC may require that the information be corrected or that a statement of disagreement be attached to the information. Only matters of fact, not opinion, may be corrected

WHAT HAPPENS TO THE OSR AND OTHER STUDENT RECORDS IF A CHILD BEGINS ATTENDING A NEW SCHOOL OR SWITCHES TO A PRIVATE SCHOOL?

Where a student has transferred schools, the *OSR Guideline* mandates that the school principal must send the OSR to the new school upon request by the new principal (except for certain limited circumstances set out in the *OSR Guideline*). This transfer would be permissible as a disclosure of personal information pursuant to section 32(c) of the municipal *Act*, which permits the disclosure

of personal information for the purpose for which it was compiled, or for a consistent purpose as described above.

Where the former school retains personal information about the student after he or she has transferred to another school, this information must be retained for the minimum time period (usually one year after use) as set out in the *Act*. The Office Index Card must be kept for 55 years after the student leaves the school.

ADDITIONAL INFORMATION

Questions or comments regarding a school board's practices relating to the collection, retention, use and disclosure of students' personal information should be directed to the school board's Freedom of Information and Privacy Co-ordinator. Additional information may be obtained from the policies developed by each school board or from the Office of the Information and Privacy Commissioner of Ontario.

APPENDIX A: *EDUCATION ACT*

SECTIONS 265(1)(D) AND 266(1), (2), (3), (4) AND (10)

265. (1) It is the duty of a principal of a school, in addition to the principal's duties as a teacher,

Pupil records

(d) in accordance with this *Act*, the regulations and the guidelines issued by the Minister, to 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 the record;

266. (1) In this section, except in subsection (12), "record", in respect of a pupil, means a record under clause 265(1)(d).

Pupil records privileged

266. (2) A record 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 pupil, and such record,

- (a) subject to subsections (2.1), (3), (5), (5.1), (5.2) and (5.3), is not available to any other person; and
- (b) except for the purposes of subsection (5), (5.1), (5.2) and (5.3), is not admissible in evidence for any purpose in any trial, inquest, inquiry, examination, hearing or other proceeding, except to prove the establishment, maintenance, retention or transfer of the record, without the written permission of the parent or guardian of the pupil or, where the pupil

is an adult, the written permission of the pupil.

Right of parent and pupil

266. (3) A pupil, and his or her parent or guardian where the pupil is a minor, is entitled to examine the record of such pupil.

(4) Where, in the opinion of a pupil who is an adult, or of the parent or guardian of a pupil who is a minor, information recorded upon the record of the pupil is,

- (a) inaccurately recorded; or
- (b) not conducive to the improvement of instruction of the pupil, such pupil, parent or guardian, as the case may be, may, in writing, request the principal to correct the alleged inaccuracy in, or to remove the impugned information from, such record.

Secrecy re contents

266. (10) Except as permitted under this section, 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 or employment, and no such person shall communicate any such knowledge to any other person except,

- (a) as may be required in the performance of his or her duties; or
- (b) with the written consent of the parent or guardian of the pupil where the pupil is a minor;
or
- (c) with the written consent of the pupil where the pupil is an adult.

SECTIONS 266.2 AND 266.3

Assignment of numbers

266.2 (1) The Minister may assign an Ontario education number to a person who is enrolled or who seeks admission to be enrolled in a prescribed educational or training institution.

(2) For the purpose of assigning an Ontario education number, the Minister and prescribed educational and training institutions are authorized to collect, directly or indirectly, personal information.

(3) Subsection 39 (2) of the *Freedom of Information and Protection of Privacy Act* and subsection 29 (2) of the *Municipal Freedom of Information and Protection of Privacy Act* do not apply to a

collection under subsection (2).

(4) For the purpose of assigning an Ontario education number, the Minister and prescribed educational and training institutions may use or disclose personal information and the disclosure shall be deemed to be for the purposes of complying with this *Act*.

Privacy re education numbers

266.3 (1) Except as permitted by this section or otherwise by law, no person shall collect, use, disclose or require the production of another person's Ontario education number.

(2) A prescribed educational or training institution may collect, use, disclose or require the production of a person's Ontario education number for purposes related to the provision of educational services to that person.

(3) The Minister and a prescribed person or entity may collect, use or disclose or require the production of Ontario education numbers for purposes related to education administration, funding, planning or research.

(4) The Minister and a prescribed person, entity, educational institution or training institution may collect, use, disclose or require the production of a person's Ontario education number for purposes related to the provision of financial assistance associated with the person's education.

SECTIONS 300.2 TO 300.4

Reporting to the principal

300.2 An employee of a board who becomes aware that a pupil of a school of the board may have engaged in an activity described in subsection 306(1) or 310(1) shall, as soon as reasonably possible, report to the principal of the school about the matter.

Notice to parent or guardian

300.3 (1) Subject to subsections (2) and (3), if the principal of a school believes that a pupil of the school has been harmed as a result of an activity described in subsection 306(1) or 310(1), the principal shall, as soon as reasonably possible, notify the parent or guardian of the pupil.

(2) A principal shall not, without the pupil's consent, notify a parent or guardian of a pupil who is,

- (a) 18 years or older; or

(b) 16 or 17 years old and has withdrawn from parental control.

(3) A principal shall not notify a parent or guardian of a pupil if, in the opinion of the principal, doing so would put the pupil at risk of harm from a parent or guardian of the pupil, such that the notification is not in the pupil's best interests.

(4) When notifying a parent or guardian of a pupil under this section, the principal shall disclose,

(a) the nature of the activity that resulted in harm to the pupil;

(b) the nature of the harm to the pupil; and

(c) the steps taken to protect the pupil's safety, including the nature of any disciplinary measures taken in response to the activity.

(5) When notifying a parent or guardian under this section, the principal shall not disclose the name of or any other identifying or personal information about a pupil who engaged in the activity that resulted in the harm, except in so far as is necessary to comply with subsection (4).

300.4 (1) If the Minister has established policies or guidelines under subsection 301(5.6), an employee of a board who observes a pupil of a school of the board behaving in a way that is likely to have a negative impact on the school climate shall respond in accordance with those policies and guidelines and in accordance with any policies and guidelines established by the board under subsection 302(3.3).

(2) Subsection (1) does not apply in circumstances set out in a regulation made under clause 316(1)(d).

APPENDIX B: MUNICIPAL FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

SECTION 29

Manner of collection

29. (1) An institution shall collect personal information only directly from the individual to whom the information relates unless,

- (a) the individual authorizes another manner of collection;
- (b) the personal information may be disclosed to the institution concerned under section 32 or under section 42 of the *Freedom of Information and Protection of Privacy Act*;
- (c) the Commissioner has authorized the manner of collection under clause 46(c);
- (d) the information is in a report from a reporting agency in accordance with the *Consumer Reporting Act*;
- (e) the information is collected for the purpose of determining suitability for an honour or award to recognize outstanding achievement or distinguished service;
- (f) the information is collected for the purpose of the conduct of a proceeding or a possible proceeding before a court or judicial or quasi-judicial tribunal;
- (g) the information is collected for the purpose of law enforcement; or
- (h) another manner of collection is authorized by or under a statute.

Notice to individual

(2) If personal information is collected on behalf of an institution, the head shall inform the individual to whom the information relates of,

- (a) the legal authority for the collection;
- (b) the principal purpose or purposes for which the personal information is intended to be used; and
- (c) the title, business address and business telephone number of an officer or employee of the institution who can answer the individual's questions about the collection.

Exception

(3) Subsection (2) does not apply if,

- (a) the head may refuse to disclose the personal information under subsection 8(1) or (2) (law enforcement);
- (b) the Minister waives the notice; or
- (c) the regulations provide that the notice is not required.

SECTION 31

Use of personal information

31. An institution shall not use personal information in its custody or under its control except,

- (a) if the person to whom the information relates has identified that information in particular and consented to its use;
- (b) for the purpose for which it was obtained or compiled or for a consistent purpose; or
- (c) for a purpose for which the information may be disclosed to the institution under section 32 or under section 42 of the *Freedom of Information and Protection of Privacy Act*.

SECTION 32

Where disclosure permitted

32. An institution shall not disclose personal information in its custody or under its control except,

- (a) in accordance with Part I;
- (b) if the person to whom the information relates has identified that information in particular and consented to its disclosure;
- (c) for the purpose for which it was obtained or compiled or for a consistent purpose;
- (d) if the disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and if the disclosure is necessary and proper in the discharge of the institution's functions;
- (e) for the purpose of complying with an *Act* of the Legislature or an *Act* of Parliament, an agreement or arrangement under such an *Act* or a treaty;
- (f) if disclosure is by a law enforcement institution,
 - (i) to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty or legislative authority, or
 - (ii) to another law enforcement agency in Canada;
- (g) 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 proceeding or from which a law enforcement proceeding is likely to result;
- (h) 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;
- (i) in compassionate circumstances, to facilitate contact with the next of kin or a friend of an individual who is injured, ill or deceased;
- (j) to the Minister;
- (k) to the Information and Privacy Commissioner of Ontario;
- (l) to the Government of Canada or the Government of Ontario in order to facilitate the auditing of shared cost programs.

APPENDIX C: EXCERPT FROM THE *OSR* *GUIDELINE*

School boards are responsible for ensuring compliance with the policies set out in this guideline. Boards will specify those persons responsible for performing clerical functions with respect to the establishment and maintenance of the OSR. Boards will also develop policies for determining:

- the types of information beyond those specified in this guideline that could be considered to be conducive to the improvement of the instruction of the student;
- the uses of the information and materials contained in the OSR beyond those specified in this guideline (see section 3.4);
- the relevance of the materials in the OSR, with a view to removing those no longer considered to be conducive to the improvement of the instruction of the student (see section 9);
- the times other than those specified in this guideline at which it could be considered appropriate to issue report cards (see section 3.2.3.1);
- the types of information beyond those required by this guideline that could be added to the office index card (see section 3.5).

In addition, boards will develop procedures to be followed to ensure:

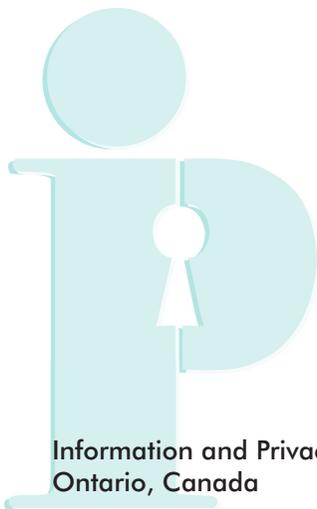
- the security of the information contained in the OSR, whether it is maintained electronically or in hard copy, during both the period of use and the period of retention and storage;
- the regular review of the OSR for the removal of any material that is no longer considered to be conducive to the improvement of the instruction of the student;

- the storage of the OSR for the period specified in the retention schedule (see section 8);
- the complete and confidential disposal of material removed from the OSR.

Boards will ensure that all persons that they assign to perform clerical functions with respect to the establishment and maintenance of the OSR are aware of the confidentiality provisions in the *Education Act* and the relevant freedom of information and protection of privacy legislation.

It is the duty of the principal of a school to:

- establish, maintain, retain, transfer, and dispose of a record for each student enrolled in the school in compliance with this guideline and the policies established by the board;
- ensure that the materials in the OSR are collected and stored in accordance with the policies in this guideline and the policies established by the board;
- ensure the security of the OSR;
- ensure that all persons specified by a board to perform clerical functions with respect to the establishment and maintenance of the OSR are aware of the confidentiality provisions in the *Education Act* and the relevant freedom of information and protection of privacy legislation.



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