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Protecting Student Privacy



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- * Student issues, including student information, student safety, discipline, custody and special education are all affected by privacy rights, as are operational issues regarding schools and school board staff.

Benefits of Technology in the Classroom

“Technology (such as iPads, Google Earth, Skype, and blogs) is becoming increasingly ubiquitous in (the) kindergarten classroom... and is an essential tool to build learner independence, deep conceptual understanding and metacognitive skills”

- * “I would be lost with out the use of technology in the classroom. My students are always engaged in their learning, sharing their ideas and expertise, and always feel a part of the learning environment...”
- * “Gen Zers are true digital natives who have never known life without the Internet or smartphones and get their information from myriad sources (often all at once)”



Privacy Risks

“Technology may have made the collection and use of personal information easier, but it has also made the abuse of information easier, and identity theft is among the fastest-growing crimes in the world.”

“... the ultimate task of protecting students’ privacy rests, in many cases, with individual teachers in the classroom.”

“Classroom teachers and principals are keepers of a huge trove of personal information about students and their families, and Ontario teachers need to be aware of their rights, obligations and liabilities when handling confidential data about students.”



what is privacy??

- * The right to control one's personal information



Applicable Privacy Legislation

- * *Canadian Charter of Rights and Freedoms (Charter)*
- * *Youth Criminal Justice Act (YCJA)*
- * *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*
- * *Personal Health Information and Protection of Privacy Act (PHIPA)*
- * *Education Act*
- * *Common Law*



Charter

- * Canadian Charter of Rights and Freedoms
 - * S.7 – right not to be deprived of life, liberty and security of the person, except in accordance with the principles of fundamental justice
 - * S. 8 - the right to be secure from unreasonable search and seizure



Youth Criminal Justice Act

- * Subsection 110 – protection of privacy
- * Subsection 125(6) of the YCJA authorizes the limited disclosure of information respecting youth to schools

Schools and others

- * (6) The provincial director, a youth worker, the Attorney General, a peace officer or any other person engaged in the provision of services to young persons may disclose to any professional or other person engaged in the supervision or care of a young person — including a representative of any school board or school or any other educational or training institution — any information contained in a record kept under sections 114 to 116 if the disclosure is necessary
 - * (a) to ensure compliance by the young person with an authorization under section 91 or an order of the youth justice court;
 - * (b) to ensure the safety of staff, students or other persons; or
 - * (c) to facilitate the rehabilitation of the young person.



Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)

Personal information – is any recorded information about an identifiable individual

- * a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- * (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- * (c) any identifying number, symbol or other particular assigned to the individual,
- * (d) the address, telephone number, fingerprints or blood type of the individual,
- * (e) the personal opinions or views of the individual except if they relate to another individual,
- * (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- * (g) the views or opinions of another individual about the individual, and
- * (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;



Collection of Student Personal Information

- * 3 circumstances under which personal information may be collected on behalf of an institution (s.28)
 - * Expressly authorized by statute
 - * Used for the purposes of law enforcement;
 - * Necessary to the proper administration of a lawfully authorized activity
- * - generally collection of personal information by a school board is authorized by the Education Act (s. 58.5, 265(d)), OSR Guideline



Personal Health Information Protection Act (PHIPA)

- * Personal health information is defined in PHIPA as identifying information relating to the physical or mental health of an individual, the provision of health care to an individual
- * A health information custodian is a person or organization, prescribed under PHIPA, with custody or control of personal health information
- * A psychologist/social worker/speech language pathologist who collects, uses and discloses health information as part of the services they provide for students of the board is governed by *PHIPA*



Use and/or Disclosure of Student Personal Information

- * Use (s. 31)
 - * Permits the use of personal info with consent of the individual
 - * Allows for the use of personal info for the purpose for which it was obtained or compiled, or for a consistent purpose
 - * May be used if one of the situations in disclosure provisions, applies
- * Disclosure (s. 32)
 - * Boards are not allowed to disclose a student's personal information unless under disclosure provisions of the Act



- * Violations of personal privacy can occur by unauthorized collection of personal information contrary to s. 28 of *MFIPPA*
- * Example:
 - * Failure to identify the collection of personal information on a standard form



- * Violations of personal privacy frequently involve the inappropriate or inadvertent disclosure of personal information
- * Examples:
 - * personal information may be lost (file misplaced, stolen laptop or USB)
 - * Inadvertent disclosure through human error (misdirected fax or letter)
- * Intentional disclosures or intentional misuse is also a possibility
 - * Example:
 - * Inadequate disposal of personal information (failure to shred materials)
 - * Intentional access to records for purposes of review (reviewing OSR or IEP of students that you do not teach)



Education Act

- * Ontario Student Record – s. 266
- * OSR Guideline – Ministerial direction to assist school boards with the creation, storage and maintenance of OSRs
- * OEN



Common Law

- * tort for invasion of privacy
 - * Jones v. Tsige, 2012 - CA “Privacy is a right that is integral to our social and political order”
 - * Elements of tort of “intrusion upon seclusion”
 - * 1. Defendant’s conduct must be intentional
 - * 2. Defendant must have invaded, without lawful justification, the plaintiff’s private affairs or concerns; and,
 - * 3. A reasonable person would regard the invasion as highly offensive causing distress, humiliation or anguish.



2016 Privacy Cases – New Privacy Tort

Tort of Public Disclosure of Private Facts

- * One who gives publicity to a matter concerning the private life of another is subject to liability to the other for invasion of the other's privacy, if the matter publicized or the act of publication
 - * (a) would be highly offensive to a reasonable person, and
 - * (b) is not of legitimate concern to the public





  **PRIVACY POLICY** 

Privacy Policy

- * Applicable Legislation
 - * Education Act, MFIPPA, PHIPA
- * Application to students, staff, school community
- * Collection, Use, Disclosure and Retention
- * Access and Correction

- * Acceptable Use Policy
- * BYOD/PED Policy
- * Privacy Breach Protocol
- * Social Media Policy

Proactive Measures to Avoid Privacy Breaches

- * Comply with the privacy laws governing the collection, retention, use and disclosure of personal information set out in *MFIPPA* and *PHIPA*
- * Comply with the regulations under the Acts governing the safe and secure disposal of personal information and the security of records
- * Ensure appropriate clauses for compliance in legal agreements with service providers
- * Obtaining advice from your board's legal counsel/external counsel and FOI Co-ordinator
- * Consulting with the IPC's Policy and Compliance Department in appropriate situations
- * Consider random spot audits of privacy policy compliance
- * Develop an information culture that respects privacy, mitigates risk, and increases awareness



Benefits of a Privacy Breach Protocol

- * Mitigate the damage by immediately preventing further inappropriate disclosures of personal information
- * Assure complainants and affected persons as well as the public, the media, and the IPC that the matter is taken seriously; and
- * Ensure that policies and procedures comply with the privacy protection provisions of *MFIPPA* and *PHIPA* and that staff are properly trained



Bring Your Own Device (BYOD)

- * Use of Technology/ Personal Electronic Device (PED) Policy
 - * Address the appropriate, acceptable use of employer resources (WiFi, web-based tools)
 - * Application to students and staff
 - * Expectations of Privacy & Security
 - * Storage & Data Retention Issues



BYOD (cont'd)

Policy should also address:

- * Training for BYOD users;
- * Acceptable and unacceptable uses of BYOD devices;
- * Sharing of devices with family members or friends;
- * Application (app) management;
- * Encryption
- * Approved devices, cloud services
- * Procedures for Storage and Retention



Social Media – Pros & Cons

- * Pros

- * new forum for discussion
- * engaging students in learning

- * Cons

- * Inappropriate actions or disclosures may result in:
 - * Professional misconduct
 - * Civil action - Defamation, privacy torts;
 - * Privacy or human rights complaint/application;
 - * Workplace grievance;
 - * Criminal charges



Use of Social Media & Privacy Implications

- * Social Media/Networking Sites –
 - * Facebook, Twitter, LinkedIn, Apps, Blogs etc.
- * Applicable Policy – Privacy, Social Media or Acceptable Use Policy
 - * During Work Hours/Off-duty conduct
 - * Limitations on postings and implications on school board
 - * Information-sharing
 - * Personal vs. School/Board accounts
 - * Employer monitoring
 - * Privacy Settings



Employer Liability

- * Tort Law
- * Breach of privacy legislation for improper collection of personal information
- * Breach of privacy legislation for improper collection of medical records



Practical Privacy Tips

- * Collect only as much personal information as you need to do your job
- * Get consent!
- * Store personal information securely –
 - * Keep hard copies under lock and key.
 - * Use password-protected and encrypted devices
- * Training and re-train on Board policies and procedures – privacy policy and privacy breach protocols
- * Consider privacy by design!



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QUESTIONS

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