

COUNSELLING SERVICES OFFERED BY BOARDS OF EDUCATION

Freedom of Information and Privacy Considerations

What kinds of counselling services can the Board provide for students?

Section 191 of *The Education Act, 1995* allows a Board to provide both counselling services for educational advice and counselling and for psychological services necessary to the growth, development and general well being of students. The general well-being of student as individuals would deal with most, if not all, issues for which counselling might be sought or recommended.

Do schools need permission from parents for students to obtain counselling services?

There is no requirement in section 191 to obtain parental permission or even to consult with parents before providing these services to students. Therefore, from the legal perspective, the board has the ability to provide counselling services even if the parents object.

This is, however, subject to any commitment the Board may have made in policy to require parental consent. *If parental consent is required by board policy then that policy must be followed.* Boards are encouraged to review policy to ensure that students are not denied necessary educational services in situations where parental consent may be an issue.

When parents do consent that consent is best obtained in writing so that there is a record. If parents do not consent that fact should be noted in writing on the student file. In such cases students can be informed of other agencies that may be able to provide assistance.

Whether or not parental consent is required by board policy, consultation with parents should be encouraged except in exceptional circumstances.

Must schools tell parents when their children receive counselling services?

The requirement to keep parents informed about the educational progress of their children may well encompass providing information that

the child is receiving counselling services. It would not necessarily include providing parents with details about what is discussed during counselling sessions. In both cases the decision to inform the parents will depend on whether or not the release of the information would violate the privacy rights of the child.

Section 49 of *The Local Authority Freedom of Information and Protection of Privacy Act (LAFOIPP)* provides that where an individual is less than 18 years of age the parent or guardian can access personal information where it would not "constitute an unreasonable invasion of the privacy of the individual". In many cases providing parents with information will not violate the privacy rights of the child because the information will better enable the parent to help the child. There are however, situations where it may be in the best interests of the child to keep the information confidential.

School division policy will have an impact on the procedures followed. Policy should be reviewed to reflect the privacy interests of the student, in balance with the need for parents to be kept informed about their children.

Can students request that their parents not be informed?

Assuming that board policy does not require consent for counselling from parents, a request from a student not to advise parents that he or she is receiving counselling can be honoured if the student:

- is of sufficient maturity;
- understands the nature of the subject matter being dealt with in counselling; and
- understands the implications of not telling his or her parents.

Similar issues have arisen concerning a child's ability to consent to medical treatment without parental consent. The courts will focus on the maturity of the child and the child's understanding of the situation including all the pros and cons of the treatment. Generally this kind of maturity starts to develop at ages 12 or 13. By age 14 or 15 most children will be considered able to give consent in a variety of situations and by 16 or 17 the child is almost always considered capable of making such

decisions. If a student is 18 or older they are an adult and can refuse to allow information to be passed to their parents.

Other factors such as the seriousness of the situation, other help available to the child and the school's knowledge of the student's background and history will also play a part in deciding whether or not to agree not to inform parents.

How should records of counselling sessions be stored?

The counsellor dealing with the student should keep whatever notes are professionally necessary to address the needs of the students. Those notes should not be kept on the cumulative record of the student. They should be stored in a safe and secure manner and should be accessible only to the counsellor and the counsellor's supervisors who may require access in order to fulfill their duties.

If the counsellor leaves the employ of the school division then the notes and records will be retained by the school division and become the responsibility of the division. This responsibility includes providing access only to those who need the notes for their duties – this would generally include only counselling staff and their supervisors.

There may be instances where a counsellor may need to share information with teachers, the principal or other professionals. The privacy interests of the student must be kept in mind and only the minimal information necessary for the provision of appropriate services to the student should be shared.

Safety concerns will always outweigh privacy issues. Counsellors can share whatever information is necessary to ensure the safety of the student.

Does a student have access to the student's counselling file and to the counsellor's notes?

Preserving the trust necessary for an effective counselling relationship is crucial. Legal advice should be sought before agreeing to release counselling notes to anyone.

Access to counselling notes is dealt with in the same way as any other request. Because the notes are personal information of the student, the primary assumption is that the student is allowed access. However, depending on the maturity of the student and the type of information in the record, section 20 of *LAFOIPP* may apply. This section allows the board of education to refuse disclosure on the basis the release of the information would harm the student. Given the nature of the counselling relationship this argument will be stronger for this type of information than it would be other types of information such as attendance records for example.

Does a parent have access to the student's counselling file and to the counsellor's notes?

The parent will be allowed access only if the privacy officer of the board of education believes it will not be an unreasonable invasion of the child's privacy. Because of the nature of counselling it is much more likely that the release of this type of information to parents will be considered an unreasonable invasion of privacy. Factors such as the maturity of the student, age, nature of information, family relationships, other assistance provided and so on will need to be considered.

What if the request is made by a lawyer or in the context of a court action?

Courts have been reluctant to require counselling notes to be released, even to parents, and even if a subpoena is served. The nature of the trust relationship between counsellor and student is recognized as one that is very important and that should be protected. The interests of the party wanting disclosure must be shown to outweigh the privacy interests of the student before the notes will be released. Legal counsel should be consulted

NOTE: The information provided in this document should not be regarded as legal advice. If you have questions about a specific fact situation please contact your legal counsel.