

Understanding Confidentiality. Excerpted from: *Confidentiality-Protocol for Handling Issues of Confidentiality in Public Schools*

Prepared by The Manitoba Teachers' Society
<http://www.mbteach.org>

Note: While the following was prepared for schools in Manitoba, Canada, most of the points are relevant to all schools.

Article 1. Understanding confidentiality:

Confidentiality is the obligation not to disclose willingly any information obtained in confidence. Therefore, information disclosed in response to a search warrant, a subpoena or a legal requirement for mandatory reporting is not a breach of confidentiality.

Child protection:

- The teacher who has reason to believe that a child is or might be in need of protection shall forthwith report the information to the appropriate authorities in accordance with legal obligations pursuant to child protection legislation.

Potential harm:

- If the behaviour of the student threatens potential harm to him/herself or another person, the teacher shall take appropriate action to protect the student and/or the other person.

Legal action:

- The teacher may be required by the courts to provide records and relevant information regarding a student.

Basic principles:

Confidentiality is based on four basic principles:

1. Respect for an individual's right to privacy.
2. Respect for human relationships in which personal information is shared.
3. Appreciation of the importance of confidentiality to both individuals and society.
4. Expectations that those who pledge to safeguard confidential information will do so.

Confidential information in its broadest form is any information given in confidence to a teacher. Confidential information may include, but is not restricted to, disclosures of physical, mental or emotional abuse; family problems; substance abuse; criminal behaviour; sexual activity; or suicidal thinking.

A teacher respects the confidential nature of information concerning students and may give the information only to authorized personnel or agencies directly concerned with the students' welfare.

Article 2. Protecting confidentiality

Confidentiality is very important to establishing and maintaining a strong teacher-student relationship. It is important that teachers are aware of the rights of individuals to privacy and to respect the confidential nature of information concerning students. A teacher, however, may consult and collaborate with other professionals for purposes of more effectively helping the student.

Some guidelines for protecting confidentiality are:

1. A teacher shall consult with the student and attempt to obtain the consent of the student before divulging confidential information.
2. A teacher may consult and collaborate with other professionals for purposes of more effectively helping the student. The teacher shall share only such information that will serve the student's best interests, and divulge the student's name only when necessary.
3. A teacher shall share information verbally with other professional colleagues rather than giving them copies of notes and ensure that colleagues respect the confidential nature of the information being shared.
4. A teacher shall take care, when sharing information about students that the information is accurate and unbiased.
5. A teacher shall guard against sharing confidential information in halls, staff rooms or other public places where persons who do not need to know can overhear it.
6. A teacher shall not leave reports, student service records, computer files or log books where unauthorized people can have access to them.
7. A teacher who is in doubt as to the reasonableness of a course of action regarding the sharing of confidential information should consult the school counsellor or school administrator before making a decision.

Article 3. Record keeping

A teacher shall keep accurate and objective records to facilitate the provision of services to students. Failure to keep records is negligence. There are no risks to having good records—well-organized, well-written, comprehensive notes will establish the teacher as a competent, caring professional.

Personal records are kept by a teacher to refresh his/her memory and to document important information regarding students for use in consultation, referrals, case conferences and court proceedings. A teacher should record enough information to meet students' needs and to demonstrate effectively that she or he has acted in an appropriate and professional manner.

Notes should be made as immediately as possible to the time of the event(s), and the original notes should never be changed. Any additions should be initialled, signed and dated.

A teacher shall make the student aware that confidential information is being recorded, share such information with the student, clarify the information and inform the student of the possible need to report such information for legal or professional purposes

Article 4. Maintaining records

Schools/school divisions should develop policies and procedures for the maintenance of records, including in such policies provisions for:

- Physical security of records
- Access to records
- Periods of maintenance for different types of records
- Destruction of records.
- Teachers must take care that their personal records are kept in secure locations.

Article 5. Requests for information

Schools should develop procedures to ensure that the confidentiality of material is maintained when it is being received or sent by the school. A teacher must keep the best interests of the student in mind when making decisions to divulge confidential information. A teacher shall consult with the student and attempt to obtain the consent of the student before divulging confidential information to authorized personnel or agencies directly concerned with the student's welfare.

The teacher should be aware of the legalities regarding the sharing of information with parents/guardians. The (Manitoba Public Schools) Act states, in part, that: Every school board shall...

- ...determine the times when and the manner in which reports and other information respecting pupils shall be delivered or provided or made available by teachers;
- ...set out the procedures for the collection, storage, retrieval, and use of information respecting pupil files.

The school/school division should develop policies and procedures for the sharing of information regarding court orders or other legal restrictions on the sharing of information about a student.

Teachers should be aware of all court orders regarding custody of students in their care, and any policies regarding the rights of non-custodial parents to information and access to a child. If non-custodial parents or other individuals involved with the student request information or access, a teacher should refer questions or concerns to the school administrator.

No information should be given without a documented request.

Schools should develop procedures to ensure that the confidentiality of material is maintained when it is being received or sent by the school. Particular care should be taken when giving information by phone or by fax.

Article 6. Legal proceedings

A teacher must never destroy records of confidential information.

Records that may be required in court proceedings should be maintained indefinitely, both to assist the student and to prove that the teacher acted responsibly.

The teacher should be aware of divisional policies regarding sharing of information with legal authorities. Information should not be given without a subpoena or a court order (e.g. search warrant).

There is no inherent right of a probation officer or the police to confidential information unless they have a search warrant. If police are executing a search warrant in the school, teachers should cooperate and immediately inform the administration. If a teacher receives a subpoena requesting records, the teacher should inform administration and seek legal advice as soon as possible. The teacher should not automatically turn over records because the subpoena may be challenged as not serving the best interests of the student. The teacher should be aware that keeping records secret or storing them out of the school does not protect them from a subpoena which usually asks for all records kept under all circumstances in any location.

It is important to be aware that the law holds us responsible for our decisions. The defense of "following regulations or policies" does not alleviate a teacher's accountability in making appropriate decisions about a student.

Article 7. So what if you don't agree?

Teachers have a professional obligation to protect confidences. They also have the obligation to act in a professional manner in their interactions with students, and with their peers.

School Divisions should develop procedures whereby a teacher can comply with this protocol without breach of confidentiality, or refuse to provide the information without being subject to disciplinary action by the division. A conflict may arise when there is a demand by the police or school administration to have confidential information released with which a teacher is reluctant to comply because doing so would violate this protocol. The teacher should immediately seek advice from appropriate sources.

When in doubt, the teacher should:

- remember that confidentiality resides with the student
- advise administration
- request help
- know the pertinent laws and regulations
- be accountable for decisions regarding students
- above all, act professionally