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## PURPOSE

*These guidelines relate to the issue of the right and appropriateness of sharing student information between a secondary school and the elementary schools that feed it.*

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## Introduction

In 2004, direction was sought from the Information and Privacy Commission (IPC) about sharing student information back and forth between elementary and secondary school panels within one school board/authority. This guidance was necessary because an interpretation of section 266 of the Education Act was limiting the school boards'/authorities' ability to share in this way. This section says that student records are privileged to select employees of the school.

The interpretation and application of cross-panel sharing of personal student information must be done with care and respect in order to strike a balance between individual privacy rights and the practical provision of educational services. Students' information is collected and maintained on an individual basis for the improvement of instruction and every use must maintain that standard.

The IPC supported the request to broaden the interpretation of s. 266 with the understanding that parents/guardians and students be informed through a clear notice describing the personal student information that will be shared and including the contact information of a staff member who can answer questions. It was also recommended that this notice be provided to all new students upon registration.

This guideline describes the analysis undertaken as well as some suggestions for implementing compliant means of cross-panel personal information sharing.

## Background

- Issue surfaced relative to inquiries related to new technologies and access to student level information
- Interpretation was explained and direction sought from the Information and Privacy Commissioner (IPC)
- Letter from Brian Beamish, Director of Policy and Compliance, IPC:
  - It is permissible to share individualized student data, including Ontario Student Record (OSR), and performance data between elementary and secondary schools.
  - Students and parents/guardians must be reasonably informed through a clear notice. The notice must describe the personal information, explain the purpose of the sharing, and provide a contact person's information. Notice must also be provided to new students upon registration.



## Statutory Explanation

Reviewing the provisions of the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA) explains why cross-panel sharing is an acceptable practice for the purposes of transition.

s53 (1): “This Act prevails over a confidentiality provision in any other Act unless the other Act or this Act specifically provides otherwise.” *The Education Act does not, in s. 266 which covers OSRs, specifically provide for paramouncy over MFIPPA; therefore we must look to MFIPPA for access/use/disclosure instructions. (The majority of the data involved in transition is OSR data.) The authority of MFIPPA alters previously held understandings around student data management.*

s28 (2): “No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity.” *Education Act ss.265 and 266 authorizes collection to create a student record.*

s29 (1): “An institution shall collect personal information only directly from the individual to whom the information relates unless.... another manner of collection is authorized by or under a statute.” *Consent and notice are equal provisions under MFIPPA. (There is no hierarchy within the provisions.)*

s29 (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.” *This notice alerts families who prefer to exclude their children from activities, but by contacting the key person provided in the notice, we should be able to reduce exclusions to a minimum.*

Sections 31 and 32 cover the use and disclosure of personal information and list the key points:

“An institution shall not use/disclose personal information in its custody or control except:

- a) if the person to whom the information relates has identified that information in particular and consented to its use/disclosure;
- b) for the purpose for which it was obtained or compiled or for a consistent purpose;
- c) if the disclosure is made to an officer or employee of the institution who needs it in the performance of his/her duties and if the disclosure is necessary and proper in the discharge of the institution’s functions. *The use of this data for transition purposes meets the requirements of b) and c) so long as we provide sufficient notifications. The vast majority of “uses” of student personal information are necessary to the provision of education services and are in keeping with our responsibilities under the Education Act and regulations, making notice sufficient.*

S34 (1): “A head shall make available for inspection by the public an index of all personal information banks in the custody or under the control of the institution, setting forth, in respect of each personal information bank,

- a) its name and location;
- b) the types of personal information maintained in it;
- c) how the personal information is used on a regular basis;



- d) to whom the personal information is disclosed on a regular basis;
- e) the categories of individuals about whom personal information is maintained; and
- f) the policies and practices applicable to the retention and disposal of the personal information.”

*Posting this on your corporate site is an excellent way to communicate this publicly.*

S35 (1): “A head shall attach or link to personal information in a personal information bank,

- a) a record of any use/disclosure of that personal information for a purpose other than a purpose described in clause 43 (1) (d).” *Remember to track this for annual reporting purposes (as required by the Information and Privacy Commission).*

## Drafting the Notice of Collection

This notice will contain:

1. Statement of Authority - “Student information is collected and used pursuant to the Education Act.”
2. Purpose Statement - “Student information is shared between elementary and secondary schools for the purpose of easing transition. Programming can be adapted based on the information gathered.”
3. Contact Information - Enough demographic information to allow contact with a person who understands and can explain the transition process.
4. Data Description - What personal student information is shared in advance of the student arrival at secondary school and what is shared with the student’s former elementary school.

## Communicating the Collection Notices

Two styles of collection notices should be used: a generic one on registration forms and a more explanatory notice in letters home, newsletters, websites, etc.

### Notification Samples

1. Letters home, school/board websites and student agenda planners -  
*“As students progress from elementary school to secondary school, important information is shared which eases a student’s transition to secondary school. Sharing it also improves our ability to program effectively to the benefit of all students. Select student information will be shared at different times as required. This is authorized under the Education Act. Please note that all information used for the transition process is limited, secure and protected at all times. Please contact a Coordinating Superintendent of Education if you would like more information about the transition process - add contact details here.”*
2. Elementary and Secondary Registration Forms -  
*“Student personal information is collected during registration and while attending school pursuant to the Education Act. It will be used for planning and programming, school to home communications, and to establish the Ontario Student Record which contains information conducive to the improvement of instruction. Limited information may be disclosed beyond the board for purposes such as yearbooks and accident information to the board’s insurer. Questions about the information collected on this form should be directed to the principal of the school.”*





- Information about a student's performance in secondary school provided to the former elementary school:

**EQAO Grades 9 and 10 Results**

**Report Card Achievement Data**

**Credit Accumulation**

**Course Selection**

## Alternatives to Cross Panel P.I. Sharing

- Share school level data only
  - Is personal information essential to the purpose?
  - Can we achieve the same or very similar results sharing school level data only?
  - What prevents us from using school level data only?
- Depersonalize by removing identifiers (for example names)
  - Does depersonalizing negatively impact the purpose?
  - Can the purpose be split into two tiers – personalized and depersonalized?
  - Even for “at-risk” students, how is managing depersonalized information going to impact the quality of what is learned from it?
  - Depersonalized student information can be viewed by teachers who never actually teach that student; teachers who may be able to work better to the benefit of other students as a result.
- Seek and acquire limited and specific signed parent/guardian consent in those instances where personal information is the only information we want and use
  - Determine how often and for how long the information is needed and stays accurate.
  - Prepare a consent form taking these things into consideration or add to existing forms (course selection and registration).

## In Summary

*MFIPPA* has paramouncy over the *Education Act* relative to transition data sharing. In other words the direction comes from *MFIPPA* and not the *Education Act* because it lacks an express confidentiality provision.

Sharing student data is an internal administrative use managed by the Act and not, as the *Education Act* would have it, an external disclosure requiring much more stringent controls.

The Office of the Information and Privacy Commissioner of Ontario has required that clear notice be provided to affected families. This notice describes the information to be shared, contact information in case there are concerns and is to be provided to every affected student.

**This document is a guideline only and is not intended in any way to be a legal opinion or to provide legal counsel**