
Manitoba Pupil File Guidelines

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Building for the Future

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Introduction

The pupil file is an ongoing official record of a student's educational progress through the Kindergarten –Grade 12 public school system in Manitoba. It is a timeline record and a synopsis of a student's educational career and the supports brought to bear to maximize educational success. A pupil file includes the entire collection or repository of information and documentation compiled or obtained by the staff of a school or school division or district relating to the education of the student which is stored in written, photographic, electronic or any other form, and which is held in a school, school board office or any other location under the jurisdiction of the school board. Practically speaking, a pupil file can potentially consist of one or more of three components comprising cumulative student information, pupil support information and youth criminal justice information.

Under subsection 42.1 of *The Public Schools Act*, the school board of a school division or district is required to establish procedures for the collection, storage, retrieval, and use of information respecting pupils.

The Manitoba Pupil File Guidelines are provided to assist school boards in carrying out their duties and responsibilities respecting student information. They are written with an emphasis on the requirements of *The Public Schools Act* respecting pupil files, within the context of *The Freedom of Information and Protection of Privacy Act* and *The Personal Health Information Act*. They are guidelines only, and the specific provisions of the relevant Acts and regulations should be referred to at all times.

There are a number of statutes and regulations, which school divisions and districts, and their officers and staff, must comply with when dealing with pupil files and when establishing procedures for handling these files. These include:

The Public Schools Act (PSA)

Subsections 42.1 to 42.6, subsection 58.1, and clause 58.6(c) and clause 58.9(2)(c) of the *PSA* define the term "pupil file" and set out specific rules respecting access to pupil files by pupils and their parents and legal guardians. (See Appendix I)

The Education Administration Miscellaneous Provisions Regulation

(Manitoba Regulation 468/88 under *The Education Administration Act*, as amended).

This Regulation describes some of the pupil information and records that school divisions and districts are required to keep.
(See Appendix I)

The Freedom of Information and Protection of Privacy Act (FIPPA)

This Act contains provisions respecting the right of access to records, including the right of access by an individual to his or her own personal information, in the custody or under the control of public bodies, and sets out rules which must be followed by public bodies respecting the collection, use, protection, retention and disclosure of personal information. All school divisions and districts have been “public bodies” falling under this Act since April 3, 2000. (See Appendix II)

The Personal Health Information Act (PHIA)

This Act contains provisions respecting the right of access by an individual to his or her own personal health information held by a trustee, and sets out rules which must be followed by trustees respecting the collection, use, protection, retention and disclosure of personal health information. School divisions and districts have been trustees falling under this Act since December 11, 1997 (as they are “public bodies”). (See Appendix III)

The Youth Criminal Justice Act (Canada) (YCJA)

The Youth Criminal Justice Act, the federal Act which replaced the *Young Offenders Act*, came into effect on April 1, 2003. Part 6 of the YCJA (sections 110 to 129) deals with records and information about young persons who have been dealt with under the YCJA (and the former *Young Offenders Act*). Part 6 of the YCJA:

- describes the records which must be kept about a young person dealt with under the YCJA by a youth justice court, review board or any other court, a police force, and departments or agencies of a government in Canada (such as Manitoba Justice);
- sets out who may have access to these court, police and government records, and under what conditions;
- contains time limits after which information about a young person cannot be disclosed;
- permits limited disclosure of information in records kept under the Act, and deals with how information provided under the Act is to be protected, shared, stored and destroyed by persons who have received it; and
- restricts further disclosure of records and information by persons, such as school representatives, who have been given access to information, or to whom information has been disclosed under the Act.

Youth criminal justice information must be handled in accordance with the YCJA, even when it is included as part of a pupil file or of some other file or record. Manitoba

statutes such as *The Public Schools Act*, *The Education Administration Act*, *FIPPA* and *PHIA* do not apply to youth criminal justice information.

Of specific relevance to school divisions and school districts is subsection 125(6) of the *YCJA*, which permits disclosure of certain information to a “school representative” for very specific purposes:

125(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 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 (for reintegration, leave or day release) 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.

(See Appendix IV.)

Establishment of The Pupil File

Subsection 42.2 of the *PSA* defines "pupil file" to mean "a record or a collection of records respecting a pupil's attendance, academic achievement and other related matters in the possession or control of a school board". A "record" is a record of information in any form: i.e., information that is written, photographs, audio and video tapes, information that is stored in electronic form, etc.

Any part or parts of a pupil file may be micro recorded or stored on a computer file in a manner that permits the printing of a clear and legible reproduction. Provision should be made to retain original documents when it is important to keep an original signature or initial on a document. Any micro recording or computer file or reproduction of a pupil file is subject to the same privacy and access requirements applicable to hard copy.

Every school board should establish a "pupil file" for each student enrolled in a Manitoba school and subsection 42.1 of the *PSA* requires that every school board establish written procedures respecting the collection, storage, retrieval and use of information respecting pupils.

The parent(s) or legal guardian(s) of a student who is not an adult and the student himself or herself (where he or she is capable of understanding this information) should be informed of the purpose, content and accessibility of the pupil file at the time of enrollment.

Responsibility for the Pupil File

School Boards

Manitoba school divisions and districts have important obligations respecting records management, access to information and protection of personal information. Subsection 42.1 of the *PSA* requires that every school board establish written procedures, consistent with the regulations under the Act and with other legislation, respecting the collection, storage, retrieval and use of information respecting pupils.

School divisions and districts must have policies and procedures in place for the day-to-day management of records containing personal information and personal health information in their custody or under their control that ensure the protection of the personal information against unauthorized access, use, disclosure or destruction and that comply with the requirements of *FIPPA* (section 41), *PHIA* (sections 18 and 19) and the *Personal Health Information Regulation*. (Appendix III)

The Manitoba Pupil File Guidelines are designed to work in conjunction with the *Guidelines on the Retention and Disposition of School Division/District Records* and to assist school divisions and districts in the formulation of the 'pupil files' portion of their records management policy. Written procedures or policies respecting pupil files should include:

- A protocol for the routing of access requests specific to pupil files, with consideration given to internal and external requests for information;
- The identification of the person(s) responsible for performing clerical functions with respect to the establishment and maintenance of the pupil file;
- A means of recording, in the cumulative file component of the pupil file, the location of all other information (i.e. resource, counseling, clinical) about a pupil that is held by the school division or district;
- Provisions for the security of the personal information contained in the pupil file during the period of use and the period of retention and storage and for the secure destruction of personal information, which include reasonable security arrangements against such risks as unauthorized access, use, disclosure or destruction (section 41 of *FIPPA*);
- Provisions for the security of personal health information contained in the pupil file during the period of use and the period of retention and storage and for the secure destruction of personal health information, which comply with the requirements of sections 18 and 19 of *PHIA* and the *Personal Health Information Regulation* under that Act;
- Provisions for the confidential storage of, access to and disclosure of, and secure destruction of youth criminal justice information, which comply with the requirements of the *YCJA*;
- The regular review of the pupil file to ensure personal information and personal health information is accurate, up to date, complete and not misleading, as required by section 38 of *FIPPA* and section 16 of *PHIA*;
- The regular review of the pupil file for the removal of any material that is no longer necessary for the student's schooling or educational advancement or for the improvement of the instruction of the student;

- A retention schedule for the information comprising the pupil file which is consistent with the requirements of section 40 of *FIPPA*, of section 17 of *PHIA* and of the *YCJA*;
- Methods for the secure storage of the pupil file for the period in the retention schedule;
- Methods and procedures for the secure destruction of records. Where personal health information and youth criminal justice information are concerned, these methods and procedures must be consistent with the requirements of section 17 of *PHIA* and of the *YCJA*;
- The procedures for file transfer to another school in the division or district or to a school in another school division or district or jurisdiction;
- A means of ensuring that multiple sources of information media (i.e. paper, micro-recordings, electronically stored data, audiotapes, videotapes, etc.) are cross-referenced with the cumulative file component of the pupil file;
- The types of information contained in the pupil file, beyond those specified in these Guidelines.

As a public body under *FIPPA* and as a trustee under *PHIA*, each school division and district is responsible for ensuring that its school board, each school under its jurisdiction and all officers, teachers and other employees of the division or district comply with the access to information and the protection of privacy provisions in these Acts. In particular:

- Each school division and district must designate, by resolution or by-law, a person or group of persons as the “head” of the school division or district for the purposes of *FIPPA* and *PHIA*.
- The “head” of a school division or district may delegate any of the head’s duties or powers under *FIPPA* and under *PHIA*, including the power to make decisions respecting access, to any person on the staff of the school division or district (see section 81 of *FIPPA* and subsection 58(2) of *PHIA*. These persons are known as “Access and Privacy Officers” (see the *Access and Privacy Regulation* (Appendix II) under *FIPPA*).
- Every school division and district must appoint an employee as an “Access and Privacy Coordinator” for the purposes of *FIPPA*. This person is responsible for receiving applications for access to records under Part 2 of the Act and for the day-to-day administration of the Act (see section 2 of the *Access and Privacy Regulation*). Administratively, the Access and Privacy Coordinator may be given similar coordinating responsibilities under *PHIA*.
- Every school division and district should develop a policy respecting access by board officers, administrative, teaching, professional (clinical/resource) and support staff employees to students’ personal information, personal health information and youth criminal justice information contained in pupil records, which is consistent with the requirements of the *PSA*, *FIPPA*, *PHIA* and the *YCJA*. Such access must be restricted to those officers and employees who need to know the information to carry out their authorized duties and must be limited to the amount of information necessary to carry out those authorized duties.
- Every school division and district should develop a policy respecting disclosure of personal information, personal health information and youth criminal justice information in pupil files, which is consistent with the requirements of the *PSA*, *FIPPA*, *PHIA* and the *YCJA*.

Principals

Under subsections 28(1) and 28(2) of the *Education Administration Miscellaneous Provisions Regulation 468/88*, principals are in charge of schools in respect of all matters of organization and management and are responsible for the supervision of schools and school staff. Principals also have responsibilities for the provision of information to parents and the community (subsections 29(1) and 29(2)). In keeping with the principal's general authority and responsibility, school division or district records management policies and procedures should include the assignment of the duties and responsibilities listed below to principals. In many instances, principals would work in collaboration with the school division or district Access and Privacy Coordinator to carry out the functions listed.

- Establish, maintain, retain, transfer and dispose of a record for each student enrolled in the school, in compliance with the criteria established by the board;
- Ensure that the materials in the pupil file reflect these Guidelines and the criteria established by the school board;
- Ensure the confidentiality and security of the pupil file;
- Respond to, or re-direct requests for access to and disclosure of pupil information, according to the policies established by the board;
- Ensure that all persons specified by the school board to perform clerical functions with respect to the establishment and maintenance of the pupil file are aware of the provisions of the *PSA*, *FIPPA*, *PHIA* and the *YCJA* protecting personal information, personal health information and youth criminal justice information and comply with the requirements of these Acts and with the policies established by the board;
- Ensure that all teaching, professional (clinical/resource) and support staff are aware of the access and privacy provisions of the *PSA*, *FIPPA*, *PHIA* and the *YCJA* and comply with the requirements of these Acts and with the policies established by the board;
- Transfer the pupil file of a pupil when she/he enrolls in another school, in accordance with subsection 29(3) of the *Education Administration Miscellaneous Provisions Regulation 468/88*.

Collection of Personal Information and Personal Health Information

Most of the information in a pupil file is personal information. Personal information is information about an identifiable individual that is recorded in any form. For example, information such as the pupil's name, home address and age, information about the pupil's ancestry, educational history, the pupil's Manitoba Education Number (MET#) and any other student identification number assigned to the student by a board, are all personal information. The rules respecting collection, use, protection, retention and disclosure of personal information (other than personal health information) are set out in Part 3 of *FIPPA*.

There could also be personal health information in a pupil file. Personal health information is recorded information about an identifiable individual that relates to his or her health or health care history, provision of health care to the individual or payment for health care provided to the individual. "Health" is defined in *PHIA* to mean "the condition of being sound in mind, body and spirit". Personal health information includes the personal health identification number (PHIN) assigned to a student by the Minister of Health. The rules respecting collection, use, protection, retention, destruction and disclosure of personal health information are set out in Part 3 of *PHIA*.

A pupil file may also contain third party information, that is, information about someone other than the pupil that the file is about (for example, there may be personal information about the pupil's parents or siblings or about other pupils in the pupil file – this is third party information).

School divisions and districts may collect personal information about a pupil if:

- collection of the information is authorized by the *PSA* or the *Education Administration Miscellaneous Provisions Regulation* or by another statute or regulation of Manitoba or Canada; or
- collection of the information relates directly to and is necessary for providing educational programs and services, supporting the pupil's educational progress or carrying out other lawful programs or activities; or
- the information is collected for law enforcement purposes (as defined in *FIPPA*) or crime prevention.

(see subsection 36(1) of *FIPPA*)

School divisions and districts may collect personal health information about a pupil if:

- the information is collected to support the pupil's schooling and educational progress, to provide educational programs and services or for another lawful purpose and connected with the functions or activities of the division or district; and
- the information is necessary for this purpose.

(see subsection 13(1) of *PHIA*)

However, care must be taken to ensure that school divisions and districts collect only as much personal information and personal health information as is necessary for the purpose for which it is collected (for example, to provide educational programs and services or to support the pupil's educational progress). (Subsection 36(2) of *FIPPA* and subsection 13(2) of *PHIA*).

If a school division or district has legal authority to collect personal information or personal health information, it does not require the consent of the pupil or parents (or legal guardian) for the collection. However, school divisions and districts are required to provide the following information to the pupil and, depending on the maturity of the pupil, to the pupil's parents or legal guardian, if personal information or personal health information is collected directly from them:

- the purpose for which the information is collected;
- the legal authority for the collection; and
- the title, business address and telephone number of an employee who can answer questions about the collection.

(see subsection 37(2) of *FIPPA* and 15(1) of *PHIA*)

One way of providing this information is to print it on all forms used to collect personal information and personal health information.

Collection of personal information or personal health information from a source other than the pupil or the pupil's parents (or legal guardian) is called an 'indirect collection'. As with collection of this information directly from the pupil, parent or legal guardian, the school division or district must have the legal authority to collect the information in question. A pupil or (depending on the pupil's maturity) a parent or legal guardian may authorize the indirect collection of personal information or personal health information by signing a consent form. If a school division or district wishes to indirectly collect personal information from other sources without consent, one of the circumstances in subsection 37(1) of *FIPPA* must apply. If a school division or district wishes to indirectly collect personal health information from other sources without consent, one of the circumstances in subsection 14(2) of *PHIA* must apply.

Collection of Youth Criminal Justice Information

Information about a pupil involving offences and proceedings under the *YCJA* which is provided to a school division or district by a court, a peace officer, a youth worker, a government department, etc. falls under the *YCJA* and should be kept in the youth criminal justice component of the pupil file. The security of, access to, protection, transfer, disclosure, retention and destruction of information in the youth criminal justice file component is strictly governed by the terms of the *YCJA*.

It would be appropriate to append a list to the youth criminal justice file component of the persons to whom the information is authorized to be disclosed. Only those persons whose names appear on the list should have access to the youth criminal justice file component. It is recommended that principals of schools, in keeping with their responsibilities, be designated as the custodian of youth criminal justice information and bear responsibility for the receipt and release, maintenance, protection and security of youth criminal justice information.

Access to the youth criminal justice file component is on a strict “need-to-know” basis only and solely for the purposes in subsection 125(6) of the *YCJA* (Appendix IV). To ensure that privacy interests of students are appropriately protected, information about a young person who has been dealt with under the *YCJA* must be kept separate from the cumulative and pupil support file components and from any other record that may be accessible to staff who are not authorized to have access to youth criminal justice information.

The Pupil File

The pupil file will contain all of the information collected or produced by a school division or district to support the educational progress of a pupil. The pupil file comprises the following components: the **cumulative file**, the **pupil support file** and the **youth criminal justice file** as necessary. The pupil file may be organized and separated into individual sub-files by these components.

Cumulative File Component

Exists for all students and will typically include:

- The student's name as registered under *The Vital Statistics Act* or, if the student was born in a jurisdiction outside Manitoba, the student's name as registered in that jurisdiction, and any other names and surnames by which the student is known;
- The birth date of the student;
- Student gender;
- The Manitoba Education Number (MET#) and any other student identification number assigned to the student by a board;
- The name of the student's parent(s) and/or legal guardian(s);
- The addresses and telephone numbers of the student and of the student's parent(s)/legal guardian(s);
- The school division or district of which the student is a resident student, if different than the school division or district the student is attending;
- The names of all schools attended by the student and the dates of enrollment, if known;
- The citizenship of the student, and if the student is not a Canadian citizen, the type of visa or other document pursuant to which the student is lawfully admitted to Canada for permanent or temporary residence and the expiry date of that visa or other document;
- Any health information that the parent or legal guardian of the student or the student (where he or she is capable of making health care decisions) wishes to be placed on the student record (e.g. allergy alerts, asthma) and, where necessary to provide health care or protect the student's health, the Personal Health Identification Number (PHIN);
- An annual summary or a summary at the end of each semester of the student's achievement or progress in the courses and programs in which the student is enrolled i.e. report cards and transcripts;
- Information about any behavioural misconduct and disciplinary measures meted out, including suspension or expulsion relating to the student;
- Attendance records;
- Photographs;
- Communication regarding the student between the home and school e.g. discipline, behaviour, achievements, etc.;
- Indications of awards, prizes;
- A copy of any separation agreement or court order with respect to child custody or guardianship, where applicable;

- A cross-reference listing which identifies the location of all information about a pupil that is held by the school division or district, including an indication of the existence and location of pupil support information not housed in the cumulative file component;
- The results obtained by the student on any diagnostic test, achievement test and examination conducted by or on behalf of the Province, and standardized tests under any testing program administered by the board to all or a large portion of the students or to a specific grade level of students;
- Any other assessment or evaluation that the parent/legal guardian or the student wishes to be placed on file;
- The most recent Individualized Education Plan (IEP) and/or Health Care Plan specifically devised for a student, and any amendments to these plans;
- Up-to-date notations of referrals to/contacts with external agencies (e.g. Child and Family Services) or caregivers;
- Admission advisement concerning whether the student has used or is continuing to use social service, psychological/psychiatric or counseling resources of any agency or of any school previously attended;
- General information related to special funding;
- Notations of pullout for resource or challenge work.

Security Requirements for the Cumulative File Component

Section 41 of *FIPPA* requires that a school division or district protect personal information by making reasonable security arrangements against such risks as unauthorized access, use, disclosure or destruction.

However, where the cumulative file component contains personal health information, the more specific security requirements in sections 18 and 19 of *PHIA* and of the *Personal Health Information Regulation* must be complied with, at least with respect to the personal health information in the file.

Pupil Support File Component

Exists for some students and will typically include:

- Detailed documentation from school clinicians and special education/resource staff about all inter-agency contacts and the provisions of any other resource services from within or outside of the school division or district that are occurring;
- Ongoing health/psycho-social/counseling information, whether medical, psychological or behavioural. (Schools should endeavour to ascertain at point of first admission whether students have used or are continuing to use the social service, psychological, psychiatric, counseling resources of any professional, of any agency, or of any school previously attended);
- School clinician reports and related correspondence, notes from meetings and discussions concerning intervention strategies, contact logs and consultation notes;
- Referrals to other agencies and individuals;
- The results obtained on specialized diagnostic tests;
- Reports from service providers such as agencies, hospitals, and clinics.

- Reports and notes from behaviour specialists such as psychologists, psychiatrists or other therapists, if such documentation exists.

Security Requirements for the Pupil Support File Component

The information comprising the pupil support file component should be kept in a secure area; designated by the school division or district, separate and away from the cumulative file component and the youth criminal justice file component. Physical access to this designated area must be limited to authorized persons (section 3 of the *Personal Health Information Regulation*). Pupil support information may be held in more than one designated secured location within a school division or district. For example, there may be pupil support information about a pupil in the school counselor's office, as well as in the resource coordinator's office. Arrangements such as this are acceptable as long as documentation is recorded in the pupil's cumulative file component stating that information on the pupil is being held in these separate locations, appropriate security measures are in place and physical access to the separate locations is limited to authorized persons (as required by s. 3 of the *Personal Health Information Regulation*).

Irrespective of where information comprising the pupil support file component is held, if it contains personal health information, the specific security requirements in sections 18 and 19 of *PHIA* and of the *Personal Health Information Regulation* must also be met.

Youth Criminal Justice File Component

Exists only for a few students and will typically include:

- The type of youth justice court order with which the young person is expected to comply i.e. bail, probation, conditional supervision, temporary release;
- The expected expiry date of the court order;
- Information about the offence for which the order has been made;
- The particular terms of the order which relate to school attendance or any other education matter;
- Prior record of offences if safety of staff and students may be at risk;
- Any identifiable individual or group of persons who could be at risk from the young person;
- Patterns of behaviour which may signal the onset of activity with potential to affect the safety of staff or students;
- Any recommendations for reducing the risk of violence and increasing the level of safety of staff and students.

Security Requirements for the Youth Criminal Justice File Component

The person designated as a school representative for the purposes of receiving information about a young person under the YCJA (usually the school principal) has specific duties and responsibilities to ensure that information is used only for the purposes for which it is disclosed, that proper security measures are implemented and followed to protect the privacy of the young person, and that the requirements of the YCJA respecting further access, use,

disclosure, storage and destruction are complied with (see subsections 125(7) and 129 of the YCJA). The school and the school representative must develop procedures to ensure that the information remains confidential, privacy is protected and that these duties and responsibilities are met. The Act contains criminal penalties for unauthorized disclosure of this information (and of information provided under the former Young Offenders Act) in section 138.

The school representative must ensure that no other person has access to the information and that the information is not disclosed to any other person unless:

- (a) access to or disclosure of the information is necessary for the purpose for which the information was provided to the school representative. That is, the school representative must not disclose the information to any person (including teaching and other school staff) except where disclosure to that person is necessary:
 - to ensure compliance with a youth justice court order or authorization for reintegration leave or day release;
 - to ensure the safety of the staff or students of the school or other persons;
 - or
 - to facilitate the rehabilitation of the young person the information is about; or
- (b) access or disclosure is authorized under some other provision of the YCJA.

It is recommended that the school representative (usually the principal) should verbally advise school staff and others who need to know the information for the authorized purposes, or should let them review but not copy the information for those purposes.

The school representative must keep the youth criminal justice information separate from all other records about the young person which are kept by the school representative or the school (clause 125(7)(a) of the YCJA).

Specific measures must be put in place to ensure that the information is secure and protected from unauthorized access, use, disclosure and destruction. Such measures can include:

- ensuring that the information is never left unattended in an unsecured area;
- storing the information in locked filing cabinets, and restricting the use of these cabinets to this information;
- putting in place procedures to control distribution of keys or lock combinations to the locked cabinets or locating them in secure areas where access is restricted to staff authorized to have access to the information;
- labeling filing cabinets so as to not reveal the fact that they contain this sensitive information;
- training school staff on confidentiality of information, privacy and security procedures and monitoring compliance with security procedures;
- ensuring that unauthorized copies are not made of the information; and
- if the information is stored electronically, ensuring the computer system has access control codes (encryption), and can automatically track attempts to obtain access to the information.

The school representative must also destroy the youth criminal justice information (and all copies the representative or the school has of the information) when it is no longer required for the purpose for which it was disclosed. The school representative must ensure that the

information is destroyed in a secure manner so that the confidentiality of the information and the privacy of the young person it is about are adequately protected (clause 125(7) of the YCJA).

For additional information, see the *“Information Sharing Protocol under the Youth Criminal Justice Act (Canada) for the Sharing of Youth Criminal Justice Information with Manitoba Schools by Manitoba Justice and Manitoba’s Policy Officers (April 2003)”* prepared by Manitoba Justice and Manitoba Education.

Access and Privacy

Generally, the access to information and protection of privacy provisions of *FIPPA* and *PHIA* apply to all records in the “custody” or under the “control” of the school division or district, other than youth criminal justice information falling under the *YCJA*. (Refer to sections specific to youth criminal justice information throughout these guidelines.) All internally and externally produced information in the pupil file is in the custody, or under the control, of the school division or district. It is important to note that, regardless of the source of the information, the school division or district is responsible for ensuring compliance with all access to information and protection of privacy requirements which apply to the information in pupil files. All personal information and personal health information respecting the pupil, and any third parties, in the pupil file must be protected against unauthorized use, access, disclosure or destruction.

To ensure the privacy of information, access by staff and others to the personal information and personal health information of pupils must be restricted to persons authorized to have access to that information in order to carry out their duties. Disclosure of personal information outside the school division or district organization must be authorized under *FIPPA* or, in the case of personal health information, *PHIA*. Security arrangements should reflect the level of sensitivity of the information in the particular pupil file component. Where personal health information is concerned, the security requirements in sections 18 and 19 of *PHIA* and in the *Personal Health Information Regulation* must be met.

School divisions and districts should ensure that all staff are aware of the policies respecting access to personal information and to personal health information by persons within the school division or district organization and the policies respecting disclosure of personal information and personal health information to persons outside the organization, as well as the relevant legislation.

A pupil file may also contain third party information, that is, information about someone other than the pupil that the file is about. Under the *PSA*, *FIPPA* and *PHIA*, access to the pupil file can be granted to a pupil, parent or legal guardian without contravening the privacy rights of the third party by severing out all information relating to the third party and providing access to the remainder of the record.

School division and district records management policies and procedures may allow that routine requests for access to the pupil file by pupils and their parent(s) or legal guardian(s) under the *PSA* be handled at the school level. Given the complexity of third party requests for access to information or requests for disclosure of another’s personal information or personal information under *FIPPA* or *PHIA*, these requests should always be routed through the school division or district Access and Privacy Coordinator.

School Division or District Staff Access to the Pupil File

Access to and use of personal information in a pupil file by school division or district staff are authorized if (Section 43 of *FIPPA*):

- the information is used for the purpose for which it was collected or compiled; or
- the information is used for a purpose which is consistent with the purpose for which it was collected or compiled; or
- the pupil or (depending on the maturity of the pupil) the pupil's parent(s) or legal guardian(s) consent to the use; or
- the information is used for a purpose for which it may be disclosed to the school division or district under the disclosure provisions of *FIPPA*.

In most instances, personal information about a pupil may be shared amongst school division or district staff to the extent that such information is necessary to assist in the educational progress or schooling of the pupil.

Use of personal health information in a pupil file by school division or district staff is authorized if:

- the information is used for the purpose for which it was collected; or
- the information is used for a purpose which is directly related to the purpose for which it was collected or received; or
- the pupil or (depending on the maturity of the pupil) the pupil's parent(s) or legal guardian(s) consent to the use; or
- one of the other circumstances in section 21 of *PHIA* applies.

School division and district policies and procedures must specifically prohibit access to personal information and personal health information in the pupil file by staff within the school division or district who do not need to know the information in question to carry out their duties. Various staff members may need to have access to different pieces of information in a pupil file in order to carry out their duties. (Subsections 42(2) and (3) of *FIPPA* and subsections 20(2) and (3) of *PHIA*).

The Provincial Director appointed under the *YCJA*, a youth worker, the Attorney General or the Attorney General's agent or delegate, a peace officer and any other person engaged in the provision of services to young persons may disclose information in a record kept under the *YCJA* to the "representative of any school board or school" where the disclosure is necessary:

- to ensure compliance by the young person with an authorization under section 91 [for *reintegration leave or day release*] or an order of the youth justice court;
- to ensure the safety of staff, students or other persons; or
- to facilitate the rehabilitation of the young person. (See subsection 125(6) of the *YCJA*.)

The school representative must ensure that youth criminal justice information in the pupil file is only made available to, and used by, staff of the school division or district for these purposes. There should be a list of the persons to whom this information may be disclosed and that list should be attached to the file. Only those persons whose names appear on that list should have access to the youth criminal justice information.

Student Access to the Pupil File

Access under The Public Schools Act

Under the *PSA*, pupils are not allowed access to their pupil file until they have reached the age of majority (the age of 18). (Clause 42.3(1)(a) and clause 58.9(2)(b)).

Subsection 42.3(2) of the *PSA* sets out the limited grounds on which a school division or district may refuse access, under that Act, to all or part of a pupil file to a pupil who has reached the age of majority:

- disclosure could reasonably be expected to constitute an unreasonable invasion of the privacy of a third party;
- disclosure could reasonably be expected to be detrimental to the education of the pupil;
- disclosure could reasonably be expected to cause serious physical or emotional harm to the pupil or another person; or
- disclosure could reasonably be expected to be injurious to the enforcement of an enactment or the conduct of an investigation under an enactment.

Where access to a pupil file by a pupil is permitted under the *PSA*, a school division or district employee who is competent to interpret the information must be made available to assist the pupil (clause 42.3(1)(b)). Pupils who have gained access to information in a pupil file can examine the information or obtain copies of the information. When a pupil examines a pupil file, a school division or district employee should be present to maintain the integrity of the file.

A pupil who has reached the age of majority may appeal a school board's decision to refuse access to all or part of a pupil file to the Manitoba Court of Queen's Bench by filing an application with the court within 30 days of being notified of the refusal of access.

Access under The Freedom of Information and Protection of Privacy Act

Under *FIPPA*, any pupil may request access to his or her personal information in his or her pupil file. (Access by the pupil to his or her personal health information is dealt with under *PHIA*.) Where the pupil is a minor, a decision will have to be made as to whether the pupil has the legal capacity to make the request (in the sense that he or she understands the nature of the request, the consequences of making it, etc.). The grounds on which access may be refused, or on which access is required to be refused, are set out in the Act, particularly in sections 17 to 32. The pupil may make a complaint to the Manitoba

Ombudsman about a decision to refuse access to all or part of a record containing personal information about the pupil. Where a complaint has been made and the Ombudsman makes a report, the pupil may appeal the decision to refuse access to the Manitoba Court of Queen's Bench.

Access under The Personal Health Information Act

Under *PHIA*, any pupil, including a pupil who is a minor, may request access to his or her personal health information in his or her pupil file. Where the pupil is a minor, a decision will have to be made as to whether the pupil has the legal capacity to make the request (in the sense that he or she understands the nature of the request, the consequences of making it, etc.). The grounds on which access may be refused are set out in subsection 11(1) of the Act. The pupil may make a complaint to the Manitoba Ombudsman about a decision to refuse access to all or part of a record containing personal health information about the pupil. Where a complaint has been made and the Ombudsman makes a report, the pupil may appeal the decision to refuse access to the Manitoba Court of Queen's Bench. A decision of the Court of Queen's Bench respecting the refusal may be appealed to the Manitoba Court of Appeal with the leave of that court.

Access under the Youth Criminal Justice Act (Canada)

Access by the pupil to youth criminal justice information in his or her pupil file is governed by the *YCJA*. **The Act does not authorize a school division or district to disclose youth criminal justice information in a pupil file to the young person.** However, information **may** be made available to the young person to whom the record relates by the youth justice court, a review board or another court, by the police, by a government department or agency or by an organization which obtained the information as a result of administering or participating in extra judicial measures or a youth sentence under the *YCJA* (section 119 of the *YCJA*).

Parental and Legal Guardian Access to the Pupil File

Access under The Public Schools Act

Under the *PSA*, a parent or legal guardian can access their child's pupil file until the pupil has reached the age of majority at which time, consent of the pupil is required to allow parent(s) or legal guardian(s) to access the pupil file (clause 42.3(1)(a), subsection 42.3(3), subsection 58.1 and clause 58.6(c)).

Subsection 42.3(2) of the *PSA* sets out the limited grounds on which a school division or district may refuse access under that Act to all or part of a pupil file, to a parent or legal guardian:

- disclosure could reasonably be expected to constitute an unreasonable invasion of the privacy of a third party;
- disclosure could reasonably be expected to be detrimental to the education of the pupil;

- disclosure could reasonably be expected to cause serious physical or emotional harm to the pupil or another person; or
- disclosure could reasonably be expected to be injurious to the enforcement of an enactment or the conduct of an investigation under an enactment.

Where access to a pupil file by a parent or legal guardian is permitted under the *PSA*, a school division or district employee who is competent to interpret the information must be made available to assist the parent or legal guardian. Parents and legal guardians who have gained access to information in a pupil file can examine the information or obtain copies of it. When a parent or legal guardian examines a pupil file, a school division or district employee should be present to maintain the integrity of the file.

A parent or legal guardian may appeal a school board's decision to refuse access to a pupil file to the Manitoba Court of Queen's Bench by filing an application with the court within 30 days of being notified of the refusal of access.

Rights of access of divorced or separated parents

Where the parents are divorced, the *Divorce Act (Canada)* states:

16(5) Unless the court orders otherwise, a spouse who is granted access to a child of the marriage has the right to make inquiries, and to be given information, as to the health, education and welfare of the child.

Where the parents are separated, *The Family Maintenance Act of Manitoba* provides that:

39(4) Unless a court otherwise orders, the non-custodial parent retains the same right as the parent granted custody to receive school, medical, psychological, dental and other reports affecting the child.

Access under The Freedom of Information and Protection of Privacy Act

Under *FIPPA*, a parent or legal guardian acting on his or her minor child's behalf may request access to the personal information in the child's pupil file when, in the opinion of the head of the school division or district, the parent's or legal guardian's exercise of this right of access would not constitute an unreasonable invasion of the child's privacy (see clause 79(d) of the Act). (In Manitoba, a minor child is a child under 18 years of age.) The grounds on which access may be refused, or on which access is required to be refused, are set out in the Act, particularly in sections 17 to 32. The parent or legal guardian may make a complaint to the Manitoba Ombudsman about a decision to refuse access to all or part of the pupil file. Where a complaint has been made and the Ombudsman makes a report, the parent or legal guardian may appeal the decision to refuse access to the Manitoba Court of Queen's Bench.

Access under The Personal Health Information Act

Under *PHIA*, a parent or legal guardian acting on his or her minor child's behalf may request access to the personal health information in the child's pupil file on the child's behalf if the child does not have the capacity to make health care decisions (see clause 60(e) of PHIA). The grounds on which access may be refused are set out in subsection 11(1) of the Act. The parent or legal guardian may make a complaint to the Manitoba Ombudsman about a

decision to refuse access to the personal health information in the pupil file. Where a complaint has been made and the Ombudsman makes a report, the parent or legal guardian may appeal the decision to refuse access to the Manitoba Court of Queen's Bench. A decision of the Court of Queen's Bench respecting the refusal may be appealed to the Manitoba Court of Appeal with the leave of that court.

Access under the *Youth Criminal Justice Act (Canada)*

Access by a parent or legal guardian to youth criminal justice information in a pupil file is governed by the *YCJA*. **The Act does not authorize a school division or district to disclose youth criminal justice information in a pupil file to a parent or legal guardian.** However, information **may** be made available to a parent or legal guardian by the youth justice court, a review board or another court, by the police, by a government department or agency, or by an organization which obtained the information as a result of administering or participating in extra judicial measures or a youth sentence under the *YCJA* (section 119 of the *YCJA*).

Correction of or Objection to Information in the Pupil File

Under section 42.5 of the *PSA*, a pupil, parent or legal guardian may request that his or her written objection to, or explanation, or interpretation of any matter contained in the pupil file be attached to the pupil file. A school board is required to comply with this request.

Both a pupil who has been given access to his or her personal information in a pupil record under Part 2 of *FIPPA* or to his or her personal health information under Part 2 of *PHIA*, and a parent or legal guardian who (acting on behalf of the pupil) has been given access to the pupil's personal information or personal health information under *FIPPA* or *PHIA*, have the right to ask the school division or district to correct personal information in the record if it is wrong or incomplete. If the school division or district refuses to correct the file, it must add the request for correction, or in the case of personal health information, a statement of disagreement to the file. A school division or district is also required, where practicable, to notify other public bodies or third parties who have received the information from it, of any correction to the information or of the request or statement of disagreement, so they can update their records (Section 39 of *FIPPA* and section 12 of *PHIA*).

Third Party Requests for Personal Information or Personal Health Information

A third party is a person, group of persons or an organization other than the person that the information is about and other than the school division or district maintaining the record. School staff may receive requests for personal information or personal health information about a student or former student, such as information regarding behaviour, attendance and academic achievement.

The school division or district Access and Privacy Coordinator should handle all third party requests for access to another's personal information, personal health information or youth criminal justice information and should ensure that:

- disclosure is authorized under *FIPPA*, *PHIA* or the *YCJA*, as the case may be; and
- disclosure of personal information and personal health information is limited to the amount necessary to accomplish the authorized purpose.

Third Party Requests for Personal Information

Any disclosure of personal information to a third party by a school division or district, or its staff, must be authorized under *FIPPA*. School divisions and districts, and their staff, are not allowed to disclose personal information about a student, including personal information in a pupil file, unless one of the circumstances set out in section 44 of *FIPPA* applies.

For example, staff may disclose personal information about a pupil (which is not personal health information and which is not youth criminal justice information) if:

- the pupil or (depending on the pupil's maturity) the pupil's parent or legal guardian consents to the disclosure (clause 44(1)(b)). Where possible, consent should be in writing. If consent is verbal, a detailed note documenting the consent should be set out in the file;
- the disclosure is for the purpose for which the information was collected or compiled or for a use consistent with that purpose (clause 44(1)(a));
- another Act or regulation of Manitoba or Canada authorizes or requires the disclosure (clause 44(1)(e)). For example: disclosure of information that a child is or may be in need of protection to a child caring agency as required by section 18 of *The Child and Family Services Act* of Manitoba; disclosure of names, addresses, etc. to a school attendance officer under section 269 of the *PSA*;
- disclosure is necessary to protect the mental or physical health or the safety of any individual or group of individuals (clause 44(1)(l));
- disclosure is for law enforcement purposes (as defined in *FIPPA*) or crime prevention (clause 44(1)(r)); For example: disclosure of personal information to the police where the information is necessary for a specific investigation into criminal activity;

- disclosure is for the purpose of supervising an individual in the custody or under the supervision, of a correctional authority (clause 44(1)(t)), for example, disclosure to a pupil's probation or Manitoba Justice Youth Worker.

These are only a few examples of the circumstances in which disclosure of personal information is authorized. School divisions and districts should consider obtaining consent to disclosure of personal information where reasonable.

Third Party Requests for Personal Health Information

Any disclosure of personal health information to a third party by a school division or district, or its staff, must be authorized under *PHIA*. School divisions and districts and their staff are not allowed to disclose personal health information about a student, including personal health information in a pupil file, unless one of the circumstances set out in section 22 of *PHIA* applies.

For example, staff may disclose personal health information about a pupil if:

- the pupil or (depending on the pupil's maturity) the pupil's parent or legal guardian consents to the disclosure (clause 22(1)(b)). Where possible, consent should be in writing. If consent is verbal, a detailed note documenting the consent should be set out in the file;
- disclosure is to a person who is providing or has provided health care to the pupil, to the extent necessary to provide the health care, unless the pupil (or parent or legal guardian) has instructed the school division or district not to make the disclosure (clause 22(2)(a));
- the school division or district reasonably believes that the disclosure is necessary to prevent or lessen a serious and immediate threat to the mental or physical health or safety of the pupil or another individual or to public health or public safety (clause 22(2)(b));
- disclosure is for the purpose of contacting a relative where the pupil is injured, incapacitated or ill (clause 22(2)(c)(i));
- another Act or regulation of Manitoba or Canada authorizes or requires the disclosure (clause 22(2)(o)).

These are only some of the circumstances in which disclosure of personal health information is authorized. Note that disclosure of personal health information for general law enforcement purposes is **not** authorized under *PHIA*. School divisions and districts should consider obtaining consent to disclosure of personal health information where reasonable, as the situations in which personal health information can be disclosed under section 22 of *PHIA* are limited.

Third Party Requests for Youth Criminal Justice Information

Youth criminal justice information in a pupil file can only be disclosed by school staff:

- to ensure compliance by the pupil with an authorization under section 91 [*for reintegration leave or day release*] or with an order of the youth justice court (e.g. concerning bail, probation, conditional supervision, etc.);
- to ensure the safety of staff, students or other persons; or
- to facilitate the rehabilitation of the young person (subsection 125(6) of the YCJA).

Transfer of the Pupil File

The school principal must forward the pupil file, including the cumulative components and all files which comprise the support file component, when the pupil transfers out of the school and enrolls in another school (subsection 29(3) of the *Education Administration Miscellaneous Provisions Regulation*). However, the youth criminal justice component of the pupil file should never be transferred. The contents of the pupil file being transferred should be reviewed to ensure that only personal information and personal health information necessary for the schooling and provision of educational services to the pupil is forwarded to the new school. Consistent with Board policy, duplicate information and information that is not necessary for the schooling and provision of education services to the pupil may be culled and destroyed.

Transfer procedures should ensure that the file contents, as they are of a sensitive and personal nature, are adequately protected from unauthorized access, disclosure, loss or destruction while being transferred. The pupil support file component should be transferred directly from professional to professional wherever possible to further ensure the security and confidentiality of the file contents. If it is not possible to transfer the pupil support file component from professional to professional, then the files that make up this component should still be transferred to the new school. Such files should be clearly identified as containing sensitive personal health information. It is up to the receiving school or school division to ensure that only appropriate personnel have access to these files.

Cumulative and Pupil Support File Components

Where the new school is in the same school division or district, the transfer of the personal information and personal health information in the cumulative file component and the pupil support file component of the pupil file is authorized under clause 43(c) of *FIPPA* (as the transfer is required by subsection 29(3) of the *Education Administration Miscellaneous Provisions Regulation*) and under clause 21 (a) of *PHIA* (as the transfer is for the purpose for which the information was collected or received or for a directly related purpose – that is, the transfer is for the purpose of supporting the schooling or educational progress of the child.)

Where the new school is in another school division or district, the transfer of personal information or personal health information in the cumulative file component and in the pupil support file component of the pupil file to the new school is authorized under clause 44(1)(e) of *FIPPA* and clause 22(2)(o) of *PHIA* (the transfer and disclosure of the information is required by subsection 29(3) of the *Education Administration and Miscellaneous Provisions Regulation*).

Transfer of the cumulative file component and of the pupil support file components are mandatory. The pupil and parent(s) or legal guardian(s) should be advised of the transfer of the file and of the nature of the information transferred. The transfer of the cumulative file component and the pupil support file component of the pupil file must still take place where objections by the student, parent(s) or legal guardian(s) are raised, as it is required by subsection 29(3) of the *Education Administration and Miscellaneous Provisions Regulation*.

Transfer of a Pupil File in Adoption Circumstances

The Adoptions Act requires that the records of adopted persons must be managed in a way that ensures that cross-referencing between birth and adoptive identities cannot occur. For this reason, when a student enrolled in a school is placed for adoption, the MET No. assigned to the student will be retired and a new MET No. will be assigned to the student's adoptive identity. A new pupil file for the student's adoptive identity must be created before the pupil file is transferred to the student's new school.

Manitoba Education will notify school principals of adoption placements. This notification will communicate to school principals:

- 1) the student name, date of birth, and MET No. of the student involved in an adoption placement proceeding
- 2) the name of the social worker appointed as legal guardian of the student during the process of adoption placement
- 3) the new adoptive identity and new MET NO. assigned to the student
- 4) the name and address of the student's receiving school

Following this notification, school principals will be contacted by the social worker to initiate a review of the content of the student's pupil file. Both the cumulative and pupil support components of the pupil file should be made available to the social worker. The social worker will recommend items that should be placed in the new file under the student's adoptive identity, however, the school principal shall make the final determination of content to be used to create the new pupil file.

The items that will comprise the new pupil file should be copied and provided to the social worker. The social worker may take the copied student information off-site for the purpose of de-identifying the information to ensure that the student's birth and adoptive identities cannot be linked by information contained in the new pupil file. When the de-identification process is complete, the social worker will return the copies of the student's pupil file information to the school principal. School principals may now:

- 1) create the new pupil file under the student's adoptive name and the new MET No. with the de-identified information provided by the social worker;
- 2) retire the original pupil file to a secure location that ensures the confidentiality of the file; and
- 3) forward the new pupil file to the student's receiving school .

In circumstances where the student does not change schools, the same process of creating a new pupil file and de-identifying the information should be undertaken. The original pupil file should be stored in a secure location that ensures the confidentiality of the file.

No record of the student's new identifying information can be retained in the existing pupil file and similarly, no record of the student's previous identifying information can be retained in the new pupil file.

At all times during this process, the file(s) must be adequately protected from unauthorized access, disclosure, loss or destruction.

Youth Criminal Justice File Component

Section 125(7) of The Youth Criminal Justice Act states that:

- 125(7) A person to whom information is disclosed under subsection (6) shall*
- (a) keep the information separate from any other record of the young person to whom the information relates;*
 - (b) ensure that no other person has access to the information except if authorized under this Act, or if necessary for the purposes of subsection (6); and*
 - (c) destroy their copy of the record when the information is no longer required for the purpose for which it was disclosed.*

In other words, the YCJA provides that no school board representative or school to whom youth criminal justice information is disclosed may disclose that information to any other person unless the disclosure is necessary:

- to ensure compliance by the young person with an authorization under section 91 (for reintegration leave or day release) or an order of the youth justice court;
- to ensure the safety of staff, students or other persons; or
- to facilitate the rehabilitation of the young person. (See subsection 125(6) of the YCJA.)

If the student transfers to another school division or district, the youth criminal justice file component must be destroyed immediately. However, the principal or school board designate must inform the youth worker responsible for the student that he/she is no longer attending the school, and of the name and location of the new school where the student is attending. The youth worker is responsible for advising the new school of any pertinent information. School officials may recommend to the youth worker that the new school be provided with the youth criminal justice information and, if possible, should supply the name of an appropriate contact person in the new school authority.

Retention and Destruction of the Pupil File

School divisions and districts are required to establish a written policy concerning the retention and destruction of personal information and personal health information, and to ensure compliance with that policy. The policy respecting retention, transfer, storage and destruction of records should be established by by-law or resolution of the school board (see clause 3(b) of *FIPPA*).

For more detailed information about developing policies on retention and destruction of school division and school district records, see the “*Guidelines on the Retention and Disposition of School Division/District Records*” revised January 2010, prepared by Manitoba Education.

Retention of Cumulative and Pupil Support File Components

The pupil file retention policy must require that personal information and personal health information in the file be retained for a reasonable period of time so that the individual that the information is about has a reasonable opportunity to obtain access to it (section 40 of *FIPPA* and section 17 of *PHIA*).

Except for Grades 9 to 12 student marks, the information in the pupil file should be retained for a minimum of ten years after the student ceases to attend a school operated by the board or until the file is transferred to another school. After the ten-year minimum retention period, pupil files can be destroyed. A retention period of at least 10 years is recommended to provide reasonable access to former students as well as to provide information for potential legal proceedings. Legal counsel for the school division or district should be consulted with respect to the appropriate retention period for pupil files.

The recommended retention period for Grades 9 to 12 student marks is 30 years. Schools are required to provide transcripts of marks free of charge to persons who are no longer enrolled (Section 15 of the *Education Administration Miscellaneous Provisions Regulation*). If a school does not maintain a central repository of student marks, but rather relies on information in the pupil file to prepare transcripts, consideration to extending the retention period of the student marks portion of a pupil file must be given.

School division or district records management policies and procedures need to provide for the removal and destruction of records from the pupil file if it is determined, according to criteria established by the division or district, that the information is no longer necessary for the schooling or educational advancement of the student.

School divisions and districts may want to store non-active pupil files at secure off-site locations for the retention period rather than at the last school of attendance. This process would need to be specified in the school division or district records management policies and procedures.

Destruction of Cumulative and Pupil Support File Components

When any part of a pupil file is no longer required, or the authorized retention period has expired, destruction of the information in a pupil file must be carried out in a manner that protects the privacy of the pupil that the information is about.

Where personal health information is involved, the school division or district must keep a record of:

- the individual whose personal health information is destroyed and the time period to which the information relates; and
- the method of destruction and the person responsible for supervising the destruction (see subsections 17(3) and (4) of *PHIA*).

Where personal health information is kept in electronic form, the school division or district must ensure the security of the personal health information when the computer hardware or removable electronic storage media on which it has been recorded is being disposed of or used for another purpose (clause 2(a)(ii) of the *Personal Health Information Regulation*).

Retention and Destruction of the Youth criminal justice File Component

The youth criminal justice file component must be destroyed as soon as it is no longer required for the purpose for which it was established (see subsection 125(7) of the YCJA). For example, where information was provided to ensure compliance with a probation order with a condition to attend school, the need for that information would cease with the expiry of that order. Similarly, in situations where information was provided to ensure safety, the destruction of the information would occur when it could be demonstrated that there was no longer a concern in relation to the safety of the students, staff or other persons, or when the young person is no longer a student of the school. In addition, if the student transfers to another school division or district, the file must be destroyed immediately. Again, destruction of the information must be carried out a manner that protects the privacy of the pupil the information is about and that meets the requirements of the YCJA.

Appendix I

The Public Schools Act (PSA)

Available for viewing on the Government of Manitoba website at:

<http://web2.gov.mb.ca/laws/statutes/ccsm/p250e.php>

Specific sections of the act cited in this document include:

Pupil Files

Storage of Information

42.1 Subject to the provisions of the Act and the regulations, every school board shall establish written procedures respecting the collection, storage, retrieval, and use of information respecting pupils.

Definition of "pupil file"

42.2 In sections 42.3 to 42.6, 58.6 and 58.9, "**pupil file**" means a record or a collection of records respecting a pupil's attendance, academic achievement and other related matters in the possession or control of a school board.

Access to pupil file

42.3(1) On request, subject to subsections (2) and (3), a school board or a person acting on behalf of a school board shall

- (a) provide a parent or, if a pupil has attained the age of majority, a pupil access to the pupil's pupil file; and
- (b) ensure that an employee who is competent to interpret the information contained in the pupil file is available to assist the parent or the pupil.

Refusal of Access

42.3(2) A school board may refuse to provide access to all or part of a pupil file where disclosure could reasonably be expected to

- (a) constitute an unreasonable invasion of the privacy of a third party;
- (b) be detrimental to the education of the pupil;
- (c) cause serious physical or emotional harm to the pupil or another person; or
- (d) be injurious to the enforcement of an enactment or the conduct of an investigation under an enactment.

Consent of adult pupil

42.3(3) The school board shall not disclose to a parent the pupil file of his or her child who has attained the age of majority without first obtaining the consent of the pupil.

Definition of court

42.4(1) In this section, “**court**” means the Court of Queen’s Bench.

Appeal to court

42.4(2) A parent or a pupil who has attained the age of majority may appeal a school board’s decision to refuse access to a pupil file by filing an application with the court within 30 days after being notified of the refusal of access.

Procedure on appeal

42.4(3) The court may, during the course of the proceedings,

- (a) order the school board to produce to the court any pupil file in the school board’s possession or control; and
- (b) take such measures as the court considers appropriate to protect the confidentiality of records, including holding a hearing or a portion of a hearing in private or in the absence of the applicant.

Order

42.4(4) Subject to subsection (5), the court may

- (a) order the school board to give the applicant access to all or part of the pupil file; and
- (b) make such other order as the court deems appropriate.

Access refused

42.4(5) The court shall not order a school board to give access to any part of a pupil file to which subsection 42.3(2) applies.

Objection to information on pupil file

42.5 A school board shall, on request by a parent or a pupil, attach to the pupil file the parent’s or pupil’s written objection to, or explanation or interpretation of, any matter contained in the file.

Disclosure in good faith

42.6 For greater certainty, nothing in sections 42.1 to 42.5 shall be interpreted to restrict the ability of a school board or a person acting on behalf of a school board to disclose information contained in a pupil file, provided the disclosure is made in good faith and within the scope of the duties and responsibilities of the school board or the person.

Rights and Responsibilities of Parents and Pupils

Definition of "parent"

58.1 In this Part, “**parent**” includes a legal guardian. (A legal guardian is defined in the PSA as “a person appointed or recognized as the guardian of a child under *The Child and Family Services Act* or *The Court of Queen’s Bench Surrogate Practice Act*.)

Rights of parents

58.6 Subject to the provisions of this Act and the regulations, a person who is resident in Manitoba is entitled to enroll his or her child in a program in any school in Manitoba and to...

- (c) have access to his or her child’s pupil file;....

Rights of pupils

58.9(2) A pupil is entitled to...

- (b) subject to subsection 42.3(2), have access to his or her pupil file, if the pupil has attained the age of majority;

School Attendance

Access to Records

269 Every school attendance officer appointed under the authority of this Act has the right of access to the records of every school board, every private school and every municipal council for the purpose of procuring the names, ages and addresses of all children and all such other information as may be required for the carrying out of the provisions of this Part.

The Education Administration Miscellaneous Provisions Regulation

(M.R. 468/88)

Available for viewing on the Government of Manitoba website at:

<http://web2.gov.mb.ca/laws/regs/pdf/e010-468.88r.pdf>

(Manitoba Regulation 468/88 under *The Education Administration Act*, as amended).

Specific sections of the Regulation cited in this document include:

Part II-Evaluations and Promotions

Student Records

14 School divisions and school districts shall maintain a record of achievement for all students.

Furnishing Transcripts

15 The principal of each school shall furnish to each student, free of charge, a transcript of his or her record of achievement at least at the end of each school year, or on request of persons who are no longer enrolled.

Part V Responsibilities of Principals and Teachers
Responsibilities of Principals

Principal's general authority

28(1) Subject to *The Public Schools Act* and the instructions of the school board, the principal is in charge of the school in respect of all matters of organization, management, instruction and discipline.

28(2) The principal is responsible for the supervision of staff, pupils, buildings, and grounds during school hours.....

Information provided to parents and others

29(1) A principal must provide pertinent and meaningful information about the school and related educational matters to parents and the community.

29(2) A principal must ensure that parents are provided with information on their children's individual achievement on a regular basis.

29(3) When a pupil transfers out of a school and enrolls in another school, the principal must provide the new school with the pupil's pupil file as defined in section 42.2 of *The Public Schools Act*.

For further information:

Contact:

Manitoba Education
Education Administration Services
507-1181 Portage Avenue
Winnipeg, Manitoba R3G 0T3
Phone: (204) 945-6899

Appendix II

The Freedom of Information and Protection of Privacy Act (FIPPA)

Access and Privacy Regulation (M.R. 64/98)

The Act and Regulation, as well as other resource materials with respect to FIPPA, are available for viewing on the Government of Manitoba website at:

www.gov.mb.ca/chc/fippa

For further information:

Contact:

School Division or District Access and Privacy Officer

or

FIPPA Contact and Development Officer
Manitoba Culture, Heritage and Tourism
Archives of Manitoba
3-200 Vaughan Street
Winnipeg, Manitoba R3C 1T5

Phone: (204) 945-2523

Toll-Free: 1-800-617-3588

Appendix III

The Personal Health Information Act (PHIA)

Personal Health Information Regulation (M.R. 245/97)

The Act and Regulation, as well as other resource materials with respect to PHIA, are available for viewing on the Government of Manitoba website at:

www.gov.mb.ca/health/phia

For further information:

Contact:

Manitoba Health
Legislative Unit
100-300 Carlton
Winnipeg, Manitoba R3B 3M9

Phone: (204) 788-6608
Toll-Free: 1-877-218-0102

Appendix IV

The *Youth Criminal Justices Act (Canada)* (YCJA)

The Act is available for viewing on the Government of Canada website at:

<http://laws-lois.justice.gc.ca/eng/acts/Y-1.5/index.html>

Specific sections of the Act cited in this document include:

- 118(1) No access unless authorized
Except as authorized or required by this Act, no person shall be given access to a record kept under sections 114 to 116, and no information contained in it may be given to any person, where to do so would identify the young person to whom it relates as a young person dealt with under this Act.
- 125(6) 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.
- 125(7) Information to be kept separate
A person to whom information is disclosed under subsection (6) shall
 (a) keep the information separate from any other record of the young person to whom the information relates;
 (b) ensure that no other person has access to the information except if authorized under this Act, or if necessary for the purposes of subsection (6); and
 (c) destroy their copy of the record when the information is no longer required for the purpose for which it was disclosed.
- 125(8) Time limit
No information may be disclosed under this section after the end of the applicable period set out in subsection 119(2) (period of access to records).
129. No subsequent disclosure
No person who is given access to a record or to whom information is disclosed under this Act shall disclose that information to any other person unless the disclosure is authorized under this Act.

For further information:

Contact:

Office of the Provincial Director
Manitoba Justice
8th Floor - 405 Broadway Avenue
Winnipeg, Manitoba R3C 3L6

Phone: (204) 945-7890

Fax: (204)948-2166

Appendix V

Frequently Asked Questions

1. *Who does the pupil file belong to?*

All recorded information about a pupil that is either generated or received by school division or district staff is in the custody, or under the control, of the school division or district. Persons granted access to the pupil file under the *PSA*, *FIPPA* or *PHIA* can view or make copies of the information in the pupil file but they may not remove information. Parents, legal guardians, and pupils may, however, request correction of, or file an objection to, information in the pupil file under the *PSA*, *FIPPA* or *PHIA*.

2. *How much notice is required by a parent to access a pupil file?*

The *PSA* does not set a notice limit for parental access to a pupil file. Under *FIPPA*, school divisions and districts have up to 30 days to respond to a request for access to information by a parent acting on behalf of his or her child. This time period can be extended for up to an additional 30 days (or for a longer period, by the Ombudsman) if the conditions of section 15 of the Act are met. Under *PHIA*, a school division or district has up to 30 days to respond to a request for personal health information by a parent acting on behalf of his or her child (subsection 12(3), and this time period cannot be extended. A parent may make a complaint to the Manitoba Ombudsman about a delay in responding to a request for access under *FIPPA* or under *PHIA*. School divisions and districts should consider these time requirements when establishing administrative procedures for dealing with access requests.

3. *May professional staff (such as counselors, clinicians, and resource coordinators) maintain a working file in addition to the pupil file?*

Yes, if the school division or district pupil file policy allows staff to maintain a working file. The existence of any such file should be documented in both the cumulative file component and a master pupil support file component. Professional staff should be aware that any record made during the course of employment with a school division or district is in the custody, or under the control, of the school division or district; it is not the author's personal property. Therefore, the working file is subject to the same access and privacy provisions as all other personal information or personal health information about a specific pupil.

4. Should there be one pupil support file component containing the information of all professionals involved with an individual pupil or can each professional maintain a discipline-specific pupil support file component?

Subject to school division or district policy, each professional could maintain a discipline-specific pupil support file component. The necessity for cross-referencing in order to acknowledge the existence of these files cannot be over-emphasized. Care must be taken to ensure that the existence of the discipline-specific file is documented in, at minimum, the cumulative file component, and preferably in the cumulative file component and in a master pupil support file component. The school division or district policy should also specify the disposition of the discipline-specific pupil support file component when it is closed. In most cases, the closed file should be transferred to a master pupil support file component. Professionals should be aware that such records may be considered to be “under the control of” a school division or district, in which case the same access and privacy provisions will apply as apply to all other personal information or personal health information on a specific pupil. Specific legal advice from the school division or district’s legal counsel may be required on this issue.

5. Can information be culled from a pupil file and destroyed?

Yes, however, the authority to do so must be set out in school division or district policy and this policy must be established by by-law or resolution of the school board (see clause 3 (b) of *FIPPA*). School division or district records management policies and procedures should include a provision for schools to routinely cull pupil files of extraneous information or information that is no longer necessary for the schooling or educational progress of the pupil. The requirement, in clause 40(2)(a) of *FIPPA*, that personal information be retained for a reasonable period of time so that the individual that the information is about has a reasonable opportunity to obtain access to it must be kept in mind. The policy may include guidelines on the type of information that may be culled and should respect record retention and disposition guidelines regarding the destruction of information. Personnel at an appropriate level should make the final decisions about the specific information that may be destroyed in a particular pupil file.

Reminder: Information in the youth criminal justice file component must be destroyed in accordance with the provisions of the *YCJA*.

See the “*Guidelines on the Retention and Disposition of School Division/District Records*” revised January 2010, prepared by Manitoba Education, for information about developing policies for retention and destruction of school division and school district records.

6. May the courts subpoena parts of, or the entire, pupil file?

Yes, in most cases the courts may subpoena either a part of, or the entire, pupil file. It is recommended that school divisions and districts consult with legal counsel prior to releasing information in response to a subpoena.

7. *If there is third party information in a pupil file, that may cause harm to the third party if disclosed, should access to the entire pupil file be denied to a parent?*

Where a parent is entitled to access to a pupil file under the *PSA*, *FIPPA* or *PHIA*, access can be granted without contravening the privacy rights of the third party by severing the portions of the file related to the third party. School division and district Access and Privacy Coordinators play a role in advising the decision maker whether third party rights to privacy will be violated and will know how to sever a file based on the requirements of the applicable legislation.

For example:

- Pupil A's file contains a behaviour report that identifies Pupil B and Pupil C.
- Pupil A is a minor, and Pupil A's parents ask to see Pupil A's pupil file under subsection 42.3(2) of the *PSA*.
- Prior to a decision being made to grant access to Pupil A's file, the Access and Privacy Coordinator determines that disclosure of the reference to Pupil B and Pupil C in the behaviour report could reasonably be expected to constitute an unreasonable invasion of the privacy of Pupil B and Pupil C. This is a ground for refusal to provide access under clause 42.3(a) of the *PSA*.
- If the decision maker (the "head" or the Access and Privacy Officer) agrees with this determination, the Access and Privacy Coordinator will then 'sever' the behaviour report by removing the names of Pupil B and Pupil C and any other information which could identify them from the report.
- Pupil A's parents can then be granted access to Pupil A's pupil file including the severed behaviour report.

Reminder: Parents and pupils cannot access information in the youth criminal justice file component.

8. *Are personal notes of a teacher or school counsellor available to the parent or legal guardian or age of majority pupil?*

Information "recorded" in any form by a person in the employ of the school division or district about a pupil is a record in the custody or under the control of the employer and is subject to all provisions respecting access to information and protection of personal information in the *PSA*, *FIPPA* and *PHIA*. As such, parents, legal guardians, and age of majority pupils may request access to personal notes made by school division or district staff under the *PSA*. In addition, parents, legal guardians, and pupils, whether adults or not, may request access to these personal notes under *FIPPA* and *PHIA*. Access can only be refused on the grounds set out in the applicable Act. The form in which the information is recorded and where it is located or stored does not affect the access and privacy rights of the individual under this legislation.

9. Can a parent who is legally separated or divorced and who does not have custody of his or her child, have access to educational information about the child?

Yes. The relevant federal and provincial legislation seems clear on this point. Where the parents are divorced, the *Divorce Act (Canada)* states:

“16(5) Unless the court orders otherwise, a spouse who is granted access to a child of the marriage has the right to make inquiries, and to be given information as to the health, education and welfare of the child.”

Where the parents are separated, *The Family Maintenance Act of Manitoba* provides that:

“39(4) Unless a court otherwise orders, the non-custodial parent retains the same right as the parent granted custody to receive school, medical, psychological, dental and other reports affecting the child.”

The relevant court orders should be reviewed to ensure the court has not restricted access to this information.

10. Can school principals share information about a pupil with other school principals?

The *YCJA* does not permit sharing of youth criminal justice information between principals.

Sharing of personal information must be authorized under *FIPPA*, in the case of personal information, and under *PHIA*, in the case of personal health information.

Sharing of personal information and personal health information with other school principals can always take place with the consent of the pupil (if he or she is legally capable of providing consent) or with the consent of a parent or legal guardian (if the pupil is not legally capable of providing consent).

Where there is no consent, sharing of personal information with other school principals is generally authorized under *FIPPA* if it is done for the purpose for which the information was originally collected or received, or for a consistent purpose – that is, sharing is for the schooling or educational progress of the student. *FIPPA* sets out other situations where personal information may be ‘shared’. Note, however, that there are restrictions respecting the sharing of personal health information in *PHIA*.

11. Does the Children’s Advocate have authority to access pupil files?

Yes, under section 8.6 of *The Child and Family Services Act*, the children’s advocate may require any person who, in the opinion of the children’s advocate is able to give any information relating to a matter being investigated by him or her to “furnish the information to the children’s advocate” and “to produce any record, paper or thing, which, in the opinion of the children’s advocate, relates to the matter being investigated and which may be in the possession or under the control of that person” (other than solicitor-client privileged information).

12. How should classroom teachers respond to requests for access to pupil file information from parents? From third parties?

The school division or district “pupil files policy” should clearly specify the procedures to be followed in regard to all access requests and requests for disclosure of information in the pupil files.

Under the *PSA*, classroom teachers in general should be able to respond to parents, legal guardians, and pupils much as they currently do. However, school divisions and districts may want to instruct teachers to direct requests for access to the pupil file to the school principal or the Access and Privacy Coordinator.

Under *FIPPA* and *PHIA*, it is the “head” of the school division or district or the head’s delegate (an Access and Privacy Officer) who has authority to make access decisions. Usually, individual teachers will not be designated as Access and Privacy Officers. Therefore, requests for access under these Acts, whether made by the pupil, parent, legal guardian or third party, should be referred to the Access and Privacy Coordinator for processing. (A third party is a person, group of persons or an organization other than the person that the information is about and other than the school division or district that is maintaining the record.)

Reminder: Parents, legal guardians, and pupils cannot access information that is in the youth criminal justice file component from the school, school division or district. Access to youth criminal justice information can only be provided by authorized bodies (the youth justice court, etc.) if permitted by the YCJA.

13. What is the role of the Access and Privacy Coordinator within the school division or district?

The *Access and Privacy Regulation* under *FIPPA* requires the appointment of an Access and Privacy Coordinator who will receive and manage access requests under that Act on a day-to-day basis. The Access and Privacy Coordinator is the public contact for all *FIPPA* matters in the school division or district. The Coordinator is also responsible for ensuring that the school division or district and its staff understand the personal information protection requirements of *FIPPA*. The Access and Privacy Coordinator does not make access decisions; these are made by the “head” of the school division or district, or the designated Access and Privacy Officers.

Administratively, the Coordinator can also be given similar coordination and educational responsibilities under *PHIA* and under the *PSA*.

School divisions and districts may also find it beneficial to combine the duties of the records manager with those of the Access and Privacy Coordinator. The records manager is responsible for the overall implementation of the records management policies relating to the retention and disposition of school division or district records.

See the “*Guidelines on the Retention and Disposition of School Division/District Records*” revised January 2010, prepared by Manitoba Education, for more detailed information about the role of the Access and Privacy Coordinator.

14. What recourse is available to persons denied access to information by a school division or district or to persons with concerns regarding the protection of personal information held by the school division or district?

A pupil who has reached the age of majority, a parent or a legal guardian may appeal a school board's decision to refuse access to a pupil file, under the *PSA*, to the Manitoba Court of Queen's Bench by filing an application with the court within 30 days of being notified of the refusal of access (section 42.4 of the *PSA*).

An individual who has requested access to a record under *FIPPA* or under *PHIA* may make a complaint to the Ombudsman about any decision, act, or failure by the head of a school division or district to act, related to that request. The Ombudsman will provide a report, containing recommendations, to the complainant and to the head of the school division or district involved. An applicant who receives a report from the Ombudsman and is still dissatisfied may appeal the refusal of access to the Manitoba Court of Queen's Bench. In the case of a refusal of access to one's own personal health information under *PHIA*, there is a right of further appeal to the Manitoba Court of Appeal with leave of the court. (See subsection 59(1) and sections 66, 67 and 74 of *FIPPA* and subsection 39(1) and sections 47, 49 and 56 of *PHIA*).

Under *FIPPA*, where a third party's privacy or confidential business interests will be affected by a decision of the "head" to disclose information, the third party may complain to the Ombudsman. The Ombudsman will provide a report, containing recommendations, to the complainant and to the head of the school division or district involved. If the complainant is still dissatisfied, he or she may appeal the decision to provide access to the Manitoba Court of Queen's Bench (see subsection 59(2) and sections 66, 67 and 74 of *FIPPA*).

Individuals who believe that their personal information has been collected, used or disclosed in violation of the privacy protection provisions of *FIPPA* or of *PHIA* may complain to the Ombudsman and the Ombudsman will provide a report, containing recommendations, to the complainant and to the head of the school division or district concerned. There is no appeal to court about the collection, use or disclosure of personal information by a public body under *FIPPA* or *PHIA* (see subsection 59(3) and sections 66 of *FIPPA* and subsection 39(2) and 47 of *PHIA*).

15. What happens if there is a difference of opinion between the youth worker and school staff regarding the nature and content of youth criminal justice information to be provided by one party or the other?

Where there is a difference of opinion between a Manitoba Justice youth worker or a police officer and a school representative regarding the nature or extent of information to be disclosed under the *YCJA*, the matter should be referred to the supervisor of each for resolution. If the dispute cannot be resolved at the supervisor level, the dispute should be referred to the Provincial Director appointed for Manitoba under the *Youth Criminal Justice Act*. For further information, see the "Information Sharing Protocol under the Youth Criminal Justice Act (Canada) for the Sharing of Youth Criminal Justice Information with Manitoba Schools by Manitoba Justice and Police Officers" (April 2003), prepared by Manitoba Justice and Manitoba Education.

16. Are independent schools and band-operated schools required to comply with FIPPA?

Independent schools and band-operated schools do not fall under *FIPPA* as they are not “local public bodies” as defined in that Act.

17. Are independent schools and band-operated schools in Manitoba required to transfer the pupil file of a pupil who leaves an independent school or a band-operated school and enrolls in another school?

Funded independent schools in Manitoba are required to comply with the *Education Administration Miscellaneous Provisions Regulation* (Manitoba Regulation 468/88 under *The Education Administration Act*, as amended). Subsection 29(3) of this Regulation requires that when a pupil transfers out of a school and enrolls in another school, the principal must provide the new school with the pupil’s pupil file.

Band-operated schools and non-funded independent schools may choose to transfer the pupil file of a student who has enrolled in another school to the new school but are not required to do so by legislation.

18. What is the protocol for the transfer of pupil files out-of-province and vice-versa?

Principals should follow the same process for forwarding pupil files to out-of-province schools as is used to transfer pupil files to Manitoba schools. Refer to the “Transfer of the Pupil File” section of the Guidelines for further information. Principals should always ensure that the request for the pupil file is received from the new school in writing and that the transfer is made using appropriate security measures.

Principals requesting pupil files for students transferring into Manitoba from out-of-province should contact the previous jurisdiction for instructions on how to request the pupil file.

19. Will the Manitoba Pupil File Guidelines and the Guidelines on the Retention and Disposition of School Division/District Records be legislated to ensure consistency amongst school boards?

The provisions of these two documents reflect the requirements of *FIPPA* and *PHIA* as well as certain related provisions under the *PSA*. The documents themselves are not legislated. School boards that choose not to follow these guidelines may find that they are in breach of these statutes, and may have to answer to the Ombudsman or the courts regarding deviations from the guidelines if complaints are lodged or an investigation is undertaken.

20. Can schools charge for transcripts of marks?

Section 15 of the *Education Administration Miscellaneous Provisions Regulation* (Manitoba Regulation 468/88 under *The Education Administration Act*, as amended) requires that “the principal of each school furnish to each student, free of charge, a transcript of his or her record of achievement at least at the end of each school year, or on request of persons who are no longer enrolled”. Schools may request payment of a fee only where a person who is no longer enrolled in the school requests more than **one** original transcript.

21. Who will determine whether to grant access to a pupil file?

Consult your local school board policy to determine who has been assigned responsibility within your school division or district for making decisions respecting access. It would be appropriate for local access and privacy policies and procedures to include provisions for consultation with the originators of pupil information, such as counselors or school clinicians, in determining whether to grant access to the requested personal information or whether there is a basis for refusing access in the exception to disclosure provisions in the applicable legislation. Note that access to personal information or personal health information can only be refused if an exception to disclosure provisions in *FIPPA*, *PHIA* or the *PSA* (as the case may be) applies to that information. The *YCJA* does **not** authorize a school division or district to disclose youth criminal justice information in a pupil file to a pupil, parent, or legal guardian.

22. Can access be granted to only portions of a pupil file?

Yes, the *PSA*, *FIPPA* and *PHIA* all set out limited exceptions to disclosure conditions under which access to all or some of the information in a file may be refused. A school division or district may, therefore, provide access to all of a file, may refuse access to part of a file (when the information in that part falls within an exception to disclosure), or may refuse access to all of the file if all of the information in it falls within an exception to disclosure. Where access to only a portion of the record is granted, the access and privacy coordinator for the school division or district will be aware of the techniques used to sever information in the record which can be disclosed from information which must or may be withheld.

23. What assurances do school administrators have that justice officials or youth workers will “advise the new school of any pertinent information” when a dangerous or violent youth criminal justice transfers into that new school, given that the previous school has been required to destroy the youth criminal justice file component of the pupil file when the transfer occurs?

The *YCJA* is federal legislation and is therefore outside of provincial jurisdiction. The decision to release youth criminal justice information to school administrators rests solely with justice officials, including the police and youth workers. School officials should ensure that justice officials or youth workers are informed when a student with a youth criminal justice file transfers to a new school. For further information, see the *“Information Sharing Protocol under the Youth Criminal Justice Act (Canada) for the Sharing of Youth Criminal Justice Information with Manitoba Schools by Manitoba Justice and Police Officers”* (April 2003), prepared by Manitoba Justice and Manitoba Education.

24. Is there a protocol among provinces to exchange youth criminal justice files or information?

No, there is no protocol among provinces to exchange youth criminal justice files or information.

25. Can a receiving school require that parents sign a form indicating that their child has no past criminal history?

No, schools cannot, as a condition of acceptance, ask parents to sign a form that would indicate whether or not their child has a criminal history.

26. What sort of pupil records should Adult Learning Centres, which are operated by a school division or district, keep?

Adult learning centers are governed by *The Adult Learning Centre Act* of Manitoba. The contents of pupil files at an Adult Learning Centre will reflect the services provided to the adult student by the school division or district. Pupil files at adult learning centers operated solely by a school division or district are in the custody or under the control of the school board, contain personal information and may contain personal health information; accordingly, they fall under the *PSA*, *FIPPA*, and *PHIA* and are subject to the same protection of privacy and access guarantees as pupil files for other students attending a public school. Where an adult learning centre is operated with a partner, the school division or district should consult with its legal counsel to determine what legislation applies.

27. Is there a need for clarification within the Manitoba Pupil File Guidelines of what the pupil cumulative file “will typically include” and what it “must” include?

The list of content information in the Guidelines that might typically be found in the pupil cumulative file is for reference only. Not every pupil file will contain every piece of information listed, while others may have documentation that has not been listed. The list is not meant to give “weight” or “priority” to any document; rather it is provided to give guidance as to where documentation should be filed. In collecting personal information and personal health information to be included in a pupil file, the school must be mindful of the requirements of the *PSA* and of the obligations under *FIPPA* and *PHIA* to collect only as much personal information or personal health information as is necessary to provide educational services to the pupil.

28. Under the PSA, an employee who is competent to interpret information must be made available to assist the parent, legal guardian, or pupil accessing a pupil file. Who on staff is considered competent to provide such interpretation?

School board policies should indicate who will determine which employee should be available to provide assistance to the parent, legal guardian or pupil. In most cases, school principals, as the individuals primarily responsible for the pupil files, should make decisions regarding who is competent to interpret information for parents or pupils accessing a pupil file. Parents, legal guardians, and pupils should never be left unsupervised with a pupil file to ensure that the integrity of the file is maintained.

29. What are the access rights of the parents or legal guardians of a mentally challenged student who is over the age of 18?

Under subsection 42.3(3) of the *PSA*, a school board must not disclose the pupil file respecting an adult student to the student’s parent or legal guardian without “first obtaining the consent of the student”. Whether or not a student is capable of providing this consent, and if not, who can provide consent on behalf of the student, should be discussed with your legal advisors.

Under *FIPPA* and *PHIA*, a parent or legal guardian of a mentally challenged student over the age of 18 may obtain access to personal information or personal health information about the student if:

(a) the student authorizes access in writing (the student must be capable of providing such an authorization) (clause 79(a) of *FIPPA*; clauses 22(1)(a) and 60(a) of *PHIA*); or

(b) the parent or legal guardian has been appointed as committee for the student under *The Mental Health Act* and access to this information relates to his or her powers and duties as committee (clause 79(b) of *FIPPA*; clauses 22(1)(a) and 60(c) of *PHIA*); or

(c) the parent or legal guardian has been appointed as a substitute decision maker for the student under *The Vulnerable Persons Living with a Mental Disability Act*, and access to this information relates to his or her powers and duties as substitute decision maker (clause 79(b) of *FIPPA* and clauses 22(1)(a) and 60(d) of *PHIA*).

30. Which Act takes precedence where there are inconsistencies or conflicts between the PSA and FIPPA and PHIA?

Generally, each of the three statutes applies to different situations or types of information, so overlap and inconsistencies are minimal.

The Public Schools Act

Subsection 42.3 of the *PSA* deals with the limited issue of access by an adult student, parent or legal guardian to a particular type of information – the information in the student’s “pupil file”. The “pupil file” may include both personal information and personal health information. Under subsection 42.3 of the *PSA*:

(a) a student over 18 has a right of access to his or her “pupil file”. While a student under 18 does not have a right of access to his or her “pupil file” under the *PSA*, he or she may have a right of access to the personal information or personal health information in that file under *FIPPA* and *PHIA* (see below);

(b) a parent or legal guardian of a student who is under 18 has specified rights of access to the student’s “pupil file”; and

(c) where the student is over 18, the parent or legal guardian has a right of access to the “pupil file” with the consent of the student.

The Personal Health Information Act

PHIA deals with the right of access by an individual to his or her own personal health information (in Part 2) and imposes requirements on school divisions and districts respecting the collection, use, protection and disclosure of personal health information (Part 3).

In the context of access to personal health information:

(a) a student, whether over or under 18, has a right to request access to personal health information about himself or herself (including personal health information in the student’s “pupil file”) under Part 2 of *PHIA*. Where a student is under 18, the issue is whether he or she is ‘capable’ of making the request (for example, does the student understand the nature of the request, the consequences of making it, etc.).

(b) a parent or legal guardian of a student under 18, as the student's "representative", has a right of access to personal health information about the student if the minor student does not have the capacity to make health care decision (clause 22(1)(a) and clause 60(e) of *PHIA*);

(c) a parent or legal guardian of a student over 18, as the student's "representative", has a right of access to personal health information about the student if the student consents, or if the parent or legal guardian has been appointed as the student's committee under *The Mental Health Act* or as a substitute decision maker under *The Vulnerable Persons Living with a Mental Disability Act* (clause 22(1)(a) and clauses 60(a), (c) and (d) of *PHIA*).

Under *PHIA*, access by a student or the student's "representative" to personal health information can only be refused if one or more of the exceptions to disclosure in subsection 11(1) apply. The exceptions to disclosure in *PHIA* are not dissimilar to the exceptions to the right of access in subsection 42.3(2) of the *PSA*.

The Freedom of Information and Protection of Privacy Act

FIPPA deals with the right of access to records in the custody, or under the control, of a public body such as a school division or district (in Part 2) and imposes requirements on school divisions and districts respecting the collection, use, protection and disclosure of personal information (Part 3).

The right of access in Part 2 of *FIPPA* includes a right of access to one's own personal information in the records of a public body. In particular:

(a) a student, whether over or under 18, has a right to request access to personal information about him or herself in a record in the custody, or under the control, of the school division or district (including personal information in the student's "pupil file"). Where a student is under 18, the issue is whether he or she is 'capable' of making the request (for example, does the student understand the nature of the request, the consequences of making it, etc.).

(b) a parent or legal guardian of a student under 18 may exercise the student's right of access to personal information on the student's behalf if, in the opinion of the "head" of the school division or district, this would not constitute an unreasonable invasion of the student's privacy (clause 79(d));

(c) a parent or legal guardian of a student over 18 may exercise the student's right of access to personal information on the student's behalf with the student's authorization (clause 79(a), or if the parent or legal guardian has been appointed the student's committee under *The Mental Health Act* or substitute decision maker under *The Vulnerable Persons Living with a Mental Disability Act* (clause 79(b)).

Under *FIPPA*, access by a student or a parent or legal guardian authorized under *FIPPA* to act on the student's behalf, can only be refused if one or more of the exceptions to disclosure in Part 2 apply. The applicable exceptions to disclosure in *FIPPA* are not dissimilar to the exceptions to the right of access in subsection 42.3(2) of the *PSA*.

Other Legislation

School divisions and districts should be aware that other legislation might apply to certain types of information in pupil files – for example:

(i) *The Youth Criminal Justice Act (Canada)* – this Act sets out the rules governing access to and disclosure, retention and destruction of records relating to young persons who have been dealt with under the Act. The *PSA*, *PHIA* and *FIPPA* do not apply to these records, even if they are in the “pupil file”.

(ii) *The Child and Family Services Act* of Manitoba – Part VI of this Act contains access and confidentiality provisions which govern disclosure of records “made under” that Act (for example, a record prepared for a child and family services agency indicating that a student may be a child in need of protection under that Act). Section 86.1 of *The Child and Family Services Act* provides that its provisions prevail over the provisions of *FIPPA* where there is an inconsistency or conflict.