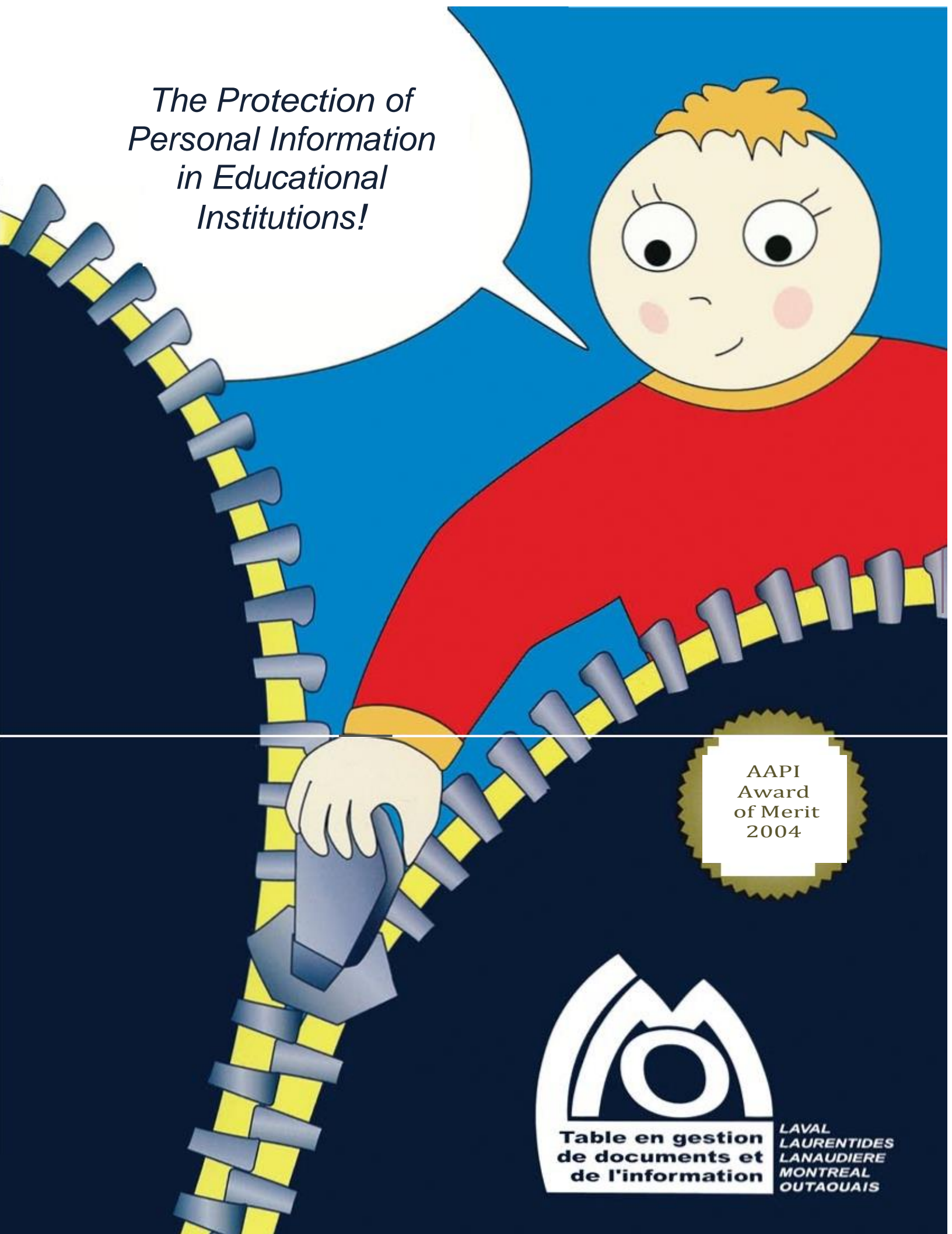


*The Protection of
Personal Information
in Educational
Institutions!*



AAPI
Award
of Merit
2004



**Table en gestion
de documents et
de l'information**

LAVAL
LAURENTIDES
LANAUDIERE
MONTREAL
OUTAOUAIS

THE PROTECTION OF PERSONAL INFORMATION IN EDUCATIONAL INSTITUTIONS



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Although this document has been analyzed from a legal perspective, it does not constitute a legal opinion and does not contain all the nuances of the Act Respecting Access to Documents Held by Public Bodies and the Protection of Personal Information.

Title of original document

La protection des renseignements personnels dans les établissements d'enseignement !
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Notes

The masculine gender when used in this document refers to both women and men. No discrimination is intended. For ease of reading, the reference to parent(s) also includes guardian(s).

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I. INTRODUCTION

In 1994, Commissions scolaires Chomedey de Laval, des Laurentides, des Manoirs and Deux-Montagnes produced a brochure entitled "*La protection des renseignements personnels à l'école plus qu'une formalité administrative!*": a reference document on the protection of information and privacy to support the education milieu.

Driven by the success of this first publication, the Table en gestion de documents et de l'information Laval, Laurentides, Lanaudière, Montréal decided to form a committee to update the document in 2004.

Following the revision of the brochure, the title was changed to "*La protection des renseignements personnels dans les établissements d'enseignement!*".

During the 2011-2012 school year, the Table en gestion de documents et de l'information Laval, Laurentides, Lanaudière, Montréal et Outaouais, in collaboration with the Table des secrétaires généraux Laval, Laurentides, Lanaudière mandated a committee to update the brochure once again.

The content was simplified and enriched, namely by adding information on student files and the delegation of parental authority. The various chapters of this brochure provide education stakeholders with relevant information on the protection of personal information in their respective institutions.

The revision of the brochure proved necessary following amendments to the Act Respecting Access to Documents Held by Public Bodies and the Protection of Personal Information in 2006.

II. OBJECTIVES

This document was produced in order to raise awareness among employees of educational institutions of the obligation to protect personal information.

Specifically, the objectives are:

- to make staff aware of the legal context concerning the protection of personal information;
- to explain the basic principles that must guide the selection of the measures that will be implemented to ensure that the spirit of the law is respected;
- to specify the responsibilities of educational institution personnel;
- to provide educational personnel a tool to help them carry out their functions.

III. CONTENT

This document first establishes the legal context regarding the protection of personal information in educational institutions by quoting the main obligations stipulated by law and defining the basic guiding principles for the protection of personal information.

Secondly, the responsibilities of educational personnel are also defined. Concrete examples are given to help prepare employees for possible situations that may arise.



LEGAL CONTEXT

LEGAL GROUNDS

In Québec, there are laws regulating the protection of personal information, such as the Charter of Human Rights and Freedoms (herein after called "the Charter of Human Rights") which clearly stipulates the right of every person to respect for his private life and the right to professional secrecy¹, and the Act Respecting Access to Documents Held by Public Bodies and the Protection of Personal Information (herein after called "the Act Respecting Access") which creates the obligation for public bodies to establish a procedure for the access to documents and the protection of personal information. Other laws and regulations also have an impact in this matter, i.e. the Civil Code of Québec, the Professional Code, the Education Act, the Youth Protection Act, etc. All this to say, the protection of personal information is taken very seriously in the Province of Québec.

The legal responsibility of public bodies, including educational institutions, is clearly defined. Specific rules were established in order to supervise the collection and use of information by public bodies. However, implementing the law should not be seen as a mere administrative formality.

Primarily, it is a means of bringing the education milieu to reflect on its practices and attitudes when handling personal information. When each employee, at every level of an organization, recognizes his own responsibility with regard to the protection of information and the respect of the rights of each student, it can be said that the spirit of the law is being respected.

Every school board should develop an administrative document to determine the terms and conditions under which information may be consulted or released by employees.

The legal context surrounding the protection of personal information can be defined by referring to two main obligations governing the collection or release of any information concerning a person:

- a general obligation of discretion;
- the obligation to ensure the protection of information collected and held by an educational institution in the performance of its duties.

However, there are exceptions in the obligation to protect information, such as the obligation to report certain situations to the Director of Youth Protection.

¹ Charter of Human Rights, sec. 5 and 9

GENERAL OBLIGATION OF DISCRETION

The Charter of Human Rights recognizes, among other things, that every person has a right to privacy. The acknowledgment of this right imposes on every person physically or morally a general obligation of discretion, whether or not this person is bound by professional secrecy.

The private life of a person includes his family life, love life, health, leisure, resources, image, reputation, etc.

The right to privacy is one of the foundations on which the whole issue of personal information protection is based.

It applies to every person, without exception, whether or not this person is an employee of a public body having to collect or release information concerning another person.

This general obligation of discretion must be taken very seriously. Employees who hold or are aware of personal information concerning students should be very prudent when using this information.

OBLIGATION TO PROTECT PERSONAL INFORMATION KEPT BY EDUCATIONAL INSTITUTIONS

The Act Respecting Access applies to educational institutions and their employees. It aims at ensuring that school and centre administrators respect the confidentiality of all personal information contained in the documents in their possession by establishing a framework for the collection, conservation, use and release of personal information.

Consequently, the Act Respecting Access imposes the obligation not to disclose personal information contained in documents held by educational institutions. In principle, educational institutions must keep confidential the personal information in their possession. When the release of information becomes necessary in the interest of a student, it must be done in compliance with the rules clearly defined in the Act Respecting Access.

WARNINGS

The Act Respecting Access provides for the possibility to release personal information without the consent of the person concerned in specific cases, such as:

- release of information to a body responsible by law for the prevention, detection or repression of crime or statutory offences, if the information is necessary to prosecute an offence against an Act applicable in Québec (example: release of the names and addresses of students who are suspects or of potential witnesses in the framework of a police investigation);
- release of information to a person to whom the information must be disclosed because of the urgency of a situation that threatens the life, health or safety of the person concerned;
- release of information to any person exposed to a danger or that person's representative, and to any person who can come to that person's aid in order to prevent an act of violence, including suicide, where there is reasonable cause to believe that there is an imminent danger of death or serious bodily injury to a person or an identifiable group of persons.

Other laws also create the obligation to release certain personal information in special circumstances, namely:

The Act to Protect Persons with Regard to Activities Involving Firearms, under which school authorities who have reasonable grounds to believe that a person on the premises of the institution is behaving in such a way as to compromise the safety of that person or another person by the use of a firearm, must report that behaviour to the police.

The Youth Protection Act, under which any person who, by the very nature of his profession and in the practice of his profession, has reasonable grounds to believe that the security or development of a child is or may be considered to be in danger must bring the situation to the attention of the Director of Youth Protection without delay.

In any of these cases, it is preferable to consult the person responsible for access to information in your organization.



BASIC PRINCIPLES

The protection of personal information in educational institutions is supported by simple, basic legal principles that aim at preventing the unnecessary flow of personal information.

Every employee must be aware of his responsibility with respect to the protection of personal information within the educational institution. By questioning whether the basic principles have been respected when collecting or releasing personal information, employees will help reduce the risk of causing prejudice to students and ensure that students' rights are respected.

Every educational institution should reflect on these basic principles to ensure that all staff members look at their own practices and attitudes, and are more attentive to the risk of wrongfully distributing information, whether verbally or in writing.

REQUIRED INFORMATION ONLY

The Law Respecting Access is very clear: "No person may, on behalf of a public body, collect personal information if it is not necessary for the exercise of the rights and powers of the body or the implementation of a program under its management."

It is therefore important to ensure that the collection of personal information is justified by the need of the school board to fulfill the mandates entrusted to it.

All employees have the obligation to demonstrate the true need for the personal information collected on behalf of the organization. They must ensure that no request from the organization will contravene this obligation.

The responsibility of ensuring that only required information is collected is assumed by all categories of employees: professionals, teachers, support staff, administrators. All staff members must assess the relevance and necessity of the information they need to obtain in order to carry out their functions for and on behalf of the organization.

After having determined that the need for personal information is justified to permit the institution to proceed, the person concerned must be informed of the intended use so that he may make an informed decision. This is another precaution established by the Act Respecting Access to protect individuals against the abusive use of information concerning them.

Consequently, educational institutions must implement measures to ensure that information that is outdated or no longer required is removed from the files.

LIMITED DISSEMINATION OF INFORMATION

The more information being circulated, the higher the risk of communicating confidential information. For instance, some information concerning a student or his family could be prejudicial or prompt a negative attitude toward the student without him having the chance to defend himself or put the facts into perspective. We can easily understand the damage that this type of information can cause. We often fail to be attentive when communicating personal information that seems harmless to us. However, this information can be interpreted or transposed in another context, giving it a whole different meaning. This is why it is important to control the dissemination of verbal and written information.

Paper and electronic copies of files must be reduced to a bare minimum to ensure that as little personal information as possible is in circulation. The tendency to place the same information in several files or to open a new file for the slightest addition should be avoided. If need be, it would be preferable to insert a reference to another file containing the information instead of reproducing part of the information.

BE PRUDENT IN CIRCULATING INFORMATION

PEOPLE DIRECTLY CONCERNED ONLY

The Act Respecting Access restricts access to personal information collected by a public body to the people directly concerned by said information, i.e. those who need the information to carry out their functions and who are "qualified to receive personal information within a public body".²

The quantity of personal information circulating in an educational institution must be limited to the bare minimum, it goes without saying that the number of people having access to this information must also be reduced to a minimum. The Act Respecting Access regulates access to personal information. But, regardless of the "administrative" constraints resulting from the application of this law and that must be respected, it is important to fully understand the underlying spirit of the law: only persons with an actual need for the personal information concerning a student, should have access to it.

It is up to the school board to determine how and by what means (i.e.: written procedures or policies) it will implement the Act Respecting Access and to ensure that the rights and obligations stipulated therein are respected. Adherence to the above-mentioned principles will ensure the respect of students' rights and facilitate the work of the various stakeholders.

² Act Respecting Access, sec. 62



RESPONSIBILITIES OF SCHOOL BOARD EMPLOYEES

Every employee, regardless of his functions, has a responsibility towards the protection of personal information held by the educational institution. There are several opportunities in an educational institution to voluntarily or accidentally give access to confidential information, whether verbally or in writing. Discussions between students or staff members, a student confiding in someone, an open file on a table, an open screen are all situations where personal information is inadvertently or unnecessarily communicated to staff members, students or parents.

However, in certain cases, it is important to know certain information concerning students in order to provide them with the support they need to successfully complete their schooling.

The protection of personal information in an educational institution is everyone's concern; the school personnel as well as students and parents.

THE SCHOOL BOARD

A person in charge of the protection of personal information is named in each school board. It is important to know who that person is at your school board.

As well, the person in charge of implementing the Act Respecting Access should develop an administrative document on the protection of personal information in order to facilitate the application of the law and specify the respective roles and responsibilities of each employee, namely with respect to the following:

- collection and conservation of personal information;
- release of information;
- access to personal information by people directly concerned in the exercise of their duties;
- destruction of information.

THE SCHOOL PRINCIPAL OR CENTRE DIRECTOR

The school principal or centre director is at the heart of the action. First, he must inform his personnel of the proper procedures for the application of the Act Respecting Access. He must also bring his personnel to realize that the protection of personal information is a shared responsibility since it is at that level that information is collected and transmitted.

Furthermore, the school principal is responsible for keeping student files and ensuring their confidentiality.

THE SCHOOL OR CENTRE PERSONNEL

All employees (teachers, professionals and support staff) are directly concerned by the protection of personal information. They must respect the confidentiality of the information in their possession, within the meaning of the Act Respecting Access. They must only record or release, whether verbally or in writing, the information required to make good decisions concerning a student.

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RIGHTS AND RESPONSIBILITIES OF PARENTS AND STUDENTS

Parents and students are those primarily concerned by the collection of information by educational institutions. They are normally made aware of the intended use of their information and their consent may be required in certain circumstances.

It is important that students and their parents understand that information must be collected to better monitor student progression and that they cooperate with the school personnel in order that accurate and relevant information may be collected and transmitted.

Both the father and mother exercise parental authority unless one of them is deprived of parental authority (loss of tutorship by decision of the court). However, only one of the parents may exercise parental authority and make decisions concerning the child unless the other parent objects to it. As provided for by the Civil Code of Québec, the educational institution is temporarily granted part of this parental authority by the parents (discipline, interdiction to leave the school during school hours, evaluations, etc.). But then again we must keep in mind that parental authority lies primarily with the parents of a student.

A student who is of age (18) and the parents of a minor student have the right to consult and to obtain copies of all the files kept by the school on this student, regardless of the nature and location of these files.

To be noted that parents lose their right to access the file of their child once she reaches (18 years of age).

As representatives of the parental authority, the educational institution and school personnel have the obligation to inform the parents of any major issue concerning their child. Omitting to do so may result in serious consequences, namely as regards the civil liability of the educational institution and its personnel.

The transmission of personal information to a third party by the educational institution may be authorized by the person with parental authority or by the student if of age.

A minor student is entitled to consult his files and to authorize their release to a third party provided his power of discernment permits it. A minor student is deemed having sufficient power of discernment if he is able to understand and analyze the information contained in his file and to assess the consequences of releasing it.

When in doubt on the capacity of discernment of a minor student, it is necessary to refer to the parents and obtain their consent before releasing any information to a student or a third party.

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STUDENT FILES

DIFFERENT TYPES OF STUDENT FILES

Educational institutions create different types of student files. The goal is to record and conserve the information required to monitor the academic progress of students.

A SUGGESTION: THREE TYPES OF STUDENT FILES

It is up to the school board to propose the number and types of files that should be used to keep information concerning students.

In the following pages, three main types of files are suggested: academic file, special needs file and student services file. What differentiate these files is the nature of the information, the people who have access to them and the retention period.

Although an electronic version of these documents may exist, the paper documents should be kept on file unless an electronic document retention system has been implemented by the school board.

ACADEMIC FILE

An academic file is open for each student and regularly updated. This file is under the responsibility of the school board and is kept in the educational institution, in the care of the school principal or centre director.

The government establishes by regulation the rules governing student admission, school attendance and report cards. In accordance with these rules, the academic file must contain the following documents:

5. STUDENT FILES

- admission and enrolment applications;
- birth certificate or other official document serving as such;
- proof of school attendance as at September 30th;
- copy of the notice of departure (if applicable);
- placement notices;
- evaluation reports on the student performance, behaviour and attendance;
- final summative evaluation results in each subject;
- report cards and academic results;
- absence form;
- schedules;
- marks review requests;
- school selection form;
- course selection form;
- equivalences;
- absence reports (adult sector);
- emergency contact form;
- academic profile (AE and VT);
- recognition of acquired competencies (AE and VT);
- deprivation of parental authority judgment (if applicable).

Other documents may also be included in this file.

SPECIAL NEEDS FILE

The special needs file contains information on a student progress. It may contain several documents, such as:

- report of the teacher in charge of rehabilitation;
- case study report;
- observation reports provided by teachers or other staff members;
- plan;
- reports on student behaviour at school;
- comments and letters sent to parents;
- observations, notices, evaluation conclusions and recommendations provided by professionals;
- individualized education plan.

STUDENT SERVICES FILES

Student services files created by each professional member of a professional corporation are files containing information subject to the application of the Act Respecting Access. These files, and access to the information they contain, are regulated by the various codes of ethics in effect.

These files normally contain the following information:

- student's family name and given name at birth, sex, date of birth, address and phone number;
- date on which the file was opened;
- brief description of the reasons for the referral;
- description of services provided with dates;
- conclusions made as a result of the evaluation and, if applicable, description of the intervention plan and recommendations;
- notes on student's progress following services;
- confidences, if deemed necessary to record them;
- signature of the professional who wrote the above-mentioned information;
- authorizations, if applicable, concerning the intervention and the transmission of information to a third party.

RULES RESPECTING CONSULTATION, COMMUNICATION, ACCESS AND RETENTION OF STUDENT FILES

Internal Consultation:

Employees who must consult a student file to carry out their functions may have access to all or part of the file without the written consent of the student or his parents.

External Communication:

A copy of all or part of the file may be given to a third party with the written and signed consent of the parent of a minor student or a student of age.

Access by a Student or his Parents:

In general, the parent of a minor student or a student of full age will be entitled to consult his file and to obtain a copy.

To be noted that parents lose their right to access the file of their child as soon as he becomes of age (18 years of age).

Retention of Student Files:

The period during which documents contained in student files must be kept is established in the school board's retention schedule.³

³ Archives Act, sec. 7

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INFORMATION TECHNOLOGY

Information technology in the education sector opens the door to major innovations both at the administrative and pedagogical levels.

However, technology has no impact on the obligations made to educational institutions regarding the protection of personal information.

These tools revolutionize work habits by accelerating the administrative decisional process and providing greater visibility to school boards. Faster pace and added flexibility give teachers extra freedom to create and use communication tools that are increasingly more efficient.

The pedagogical use of information technology in educational institutions has become common practice. It is therefore important for educational institutions to raise teachers', parents' and students' awareness on the general rules and specific provisions governing the protection of personal information.

Simple actions can ensure the protection of personal information: turning off our computer, preventing others from viewing our screen, installing a firewall, keeping our password and user code confidential.

To ensure the safe and responsible use of information technology and to inform users of their rights, obligations and limitations, the school board should develop an administrative document (policy, procedure, norms...) to establish the rules, guidelines and code of conduct regarding the use of technology.

There are always risks associated with the use of information technology to handle personal information; vigilance must be applied at all times.

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FREQUENTLY ASKED QUESTIONS

7. FREQUENTLY ASKED QUESTIONS

1. PARENTS

1.1 Who has the right to access personal information concerning a minor student?

Only the student himself or his parents have the right to access this information. Any other person must obtain the written consent of the parents.

1.2 Can the parent of a student of age access his child's academic file?

No, unless the student of age gives his consent in writing.

1.3 Can the parent who does not have custody have access to his child's file?

Yes, unless the parent is deprived of parental authority; i.e. a deprivation of parental rights authority was issued by the court.

When in doubt concerning the right of a parent to access information, always refer to the person in charge of access to information to ensure that standard verifications will be done.

2. MINOR STUDENT

2.1 Can a minor student have access to his file if he requests it?

Yes, provided his power of discernment permits it; i.e. if he is capable of understanding and analyzing the information contained in his file.

When in doubt concerning the power of discernment of a student or the consequences of releasing certain information, the school principal should first contact the parents.

2.2 Can a minor student authorize the release of his file to a third party?

Yes, provided his power of discernment permits it; i.e. if he is capable of understanding what he is consenting to and to evaluate the consequences.

When in doubt concerning the power of discernment of a student or the consequences of releasing certain information, the prior consent of the parents must be obtained.

3. POLICE OFFICERS AND GOVERNMENT INVESTIGATORS

3.1 Are police officers and government investigators entitled to obtain personal information on a student?

A school board may release personal information without the consent of the person concerned to a body responsible by law for the prevention, detection or repression of crime or statutory offences if the information is necessary to prosecute an offence against an Act applicable in Québec.

Unless clear instructions are given, to ensure that this exception is applied in conformity with the law, the situation should be referred to the person in charge of access to information for analysis and follow-up.

4. LAWYERS

4.1 Can personal information be transmitted to a lawyer?

Lawyers do not have any privileged access rights by virtue of the law. They must obtain the written authorization of the person concerned by the document.

The mere reception of a subpoena from a lawyer does not entitle school authorities to release information without the consent of the person concerned or a court order.

5. EMPLOYEES

5.1 Do school board employees have access to students' personal information?

Only employees who must consult the information to carry out their duties may access personal information contained in a student's file.

5.2 Can personal information concerning an employee be transmitted to a third party?

No, unless the employee concerned consents to it.

5.3 Can people who volunteer in educational institutions access confidential information?

Since volunteers are not part of the administrative structure of an educational institution, they must be assigned duties that do not require access to confidential information.

In order to raise volunteers' awareness on the Act Respecting Access, an educational institution could create a solemn declaration form concerning personal information to be signed at the beginning of every volunteering activity.

6. DESTRUCTION OF DOCUMENTS

6.1 Which documents must be destroyed?

The Act Respecting Access stipulates that "When the purpose for which personal information was collected or used have been achieved, the public body must destroy the information" as per the school board document retention schedule.

Documents containing personal information must be destroyed by shredding to protect their confidential nature.

MEMORANDUM

QUICK REFERENCE GUIDE

PROTECTION OF PERSONAL INFORMATION IN EDUCATIONAL INSTITUTIONS

In order to protect personal information held by the school board, each employee concerned must respect the following principles:

- Collect personal information required only;
- Reduce to a minimum the release of personal information;
- Keep personal information in a safe place;
- Destroy effectively personal information no longer required.

TRANSMISSION OF PERSONAL INFORMATION

RECOMMENDED PROCEDURES

1. Verify the identification of the person requesting the information (identification).
2. Request information on the file (ex.: family name, given name, date of birth, schooling, graduation date...).
3. Request a written authorization, signed and dated, if the request is made by a third party.
4. Check the authenticity of the information provided by the applicant.

TRANSMISSION BY FAX

Note: The transmission of personal information by fax is not recommended.

In an urgent situation the following procedure must be applied:

1. Advise the recipient that the document has been transmitted and ensure that he receives it.
2. Include a fax cover sheet containing a confidentiality notice.
3. Request a confirmation of receipt from the person authorized to receive the document.
4. Keep or record the request for information.
5. Verify that the quality of the document received has not been altered by the fax machine.

TRANSMISSION BY EMAIL

- This method of communication is not acceptable because the identity of the person requesting the document cannot be verified.

TRANSMISSION BY PHONE

- Use the phone only to collect information. Never give personal information over the phone.

When in doubt, do not provide any personal information and verify with the person responsible for the application of the Act Respecting Access to Documents Held by Public Bodies and the Protection of Personal Information.

Name of person in charge _____ Telephone _____