

SEXUAL AND REPRODUCTIVE RIGHTS OF YOUTH IN ALBERTA

With some knowledge about the laws that govern privacy and consent, you will be better able to volunteer information and respond to a youth's query in a timely manner so that the opportunity to help the youth is not lost.

I. Background:

How is this relevant to my job as a teacher or school counsellor?

- Youth under the age of majority (18 years) are considered minors in Alberta.
- Minors seeking your guidance about sexual and reproductive health (SRH) issues may be unclear about how personal information shared with you will be treated. In particular, **youth may not understand how their rights to privacy and confidentiality are maintained in the school setting.**

It is important to note that each school board, public or separate, will have specific policies concerning these issues that teachers and school counsellors also must take into consideration.

II. Duty of Confidentiality

Do I have duty to keep a minor's personal information confidential?

When a student talks to you, as a teacher or school counsellor, about SRH issues a **relationship of trust and a duty of confidentiality is created**. The duty of confidentiality that a teacher or school counsellor owes to a student also arises from professional codes of conduct. See the *Alberta Teachers' Association Code of Professional Conduct* and the *College of Alberta Psychologists Code of Conduct*.

While professionals are expected to follow codes of conduct, statutes (legislation) and the common law also impose legal obligations on professionals. The *Freedom of Information and Protection of Privacy Act* ("FOIPPA") is the statute that governs how public bodies, such as schools, collect, use, disclose and allow access to personal information. 'Public bodies' capture most teachers and, where employed by a school, school counsellors. In

general, the FOIPPA requires that teachers and school counsellors protect the confidentiality of information. As with codes of conduct though, exceptions exist to the duty of confidentiality created under the FOIPPA.

III. Exceptions to the duty of confidentiality:

What are they and when do they apply?

SRH issues are of a highly personal nature and a minor should, where appropriate, receive assurance that his/her information will not be shared outside the relationship. It is important for both student and teacher/counsellor to know that there are some exceptions to the duty of confidentiality.

FOIPPA lists several exceptions to the duty of confidentiality, the most common ones that may become relevant are:

- if the disclosure would not be an unreasonable invasion of the student's personal privacy.

A disclosure is *not* an unreasonable invasion of a third party's personal privacy if:

- compelling circumstances affecting anyone's health or safety exist and written notice of the disclosure is given to the student.

A disclosure of personal information *is* presumed to be an unreasonable invasion of a third party's personal privacy if the personal information relates to:

- a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation.

Also, in determining an unreasonable invasion of privacy, all the relevant circumstances must be considered, together with specific factors, the relevant ones being:

- if the disclosure is likely to promote public health and safety; and
- if the individual the information is about has identified the information and consented to the disclosure.

- for the purpose of complying with a subpoena, warrant or court order;
- if, on reasonable grounds, the disclosure will avert or minimize an imminent danger to the health or safety of any person; or
- for any purpose under a statute of Alberta or Canada that authorizes or requires the disclosure.

Note: Two important laws that require disclosure and that may be relevant to youths and SRH issues are:

- the *Child Welfare Act*, under which every person, including teachers and school counsellors, who learns that a child is in need of protective services must report information to the Director of Child Welfare; and
- the *Public Health Act*, under which teachers are required to report certain information if an individual,

including a minor, is known or believed to have a **reportable communicable disease** (see the *Communicable Diseases Regulation* under the *Public Health Act* for a list of diseases).

IV. Access to personal information:

If a parent asks for his/her child’s school record, can I give it?

General Rule

FOIPPA identifies who may exercise the rights set out under the FOIPPA, including the right to access personal information.

- if the individual is a minor, the guardian may access records if, in the opinion of the head of the public body, the exercise of the right or power by the guardian would not constitute an unreasonable invasion of the personal privacy of the minor.

See FOIPPA for a list of situations that would and would not constitute an unreasonable invasion of privacy, as well as factors that should be considered in making such a determination.

When a parent requests information the teacher or school counsellor usually decides if it will be an unreasonable invasion of the student’s privacy. This decision is done on a case-by-case basis. If you are ever in doubt, consult with colleagues and, where appropriate, seek legal advice.

This is the general rule for access rights. *It is a general rule because it applies to teachers’ notes and counselling records but is slightly different for school records.*

School Records

The *Alberta School Act* and its regulations change the general rule when a “school record” (as defined in that legislation) is being accessed.

- Under this law:
 - if the student is under 16, the general FOIPPA rule applies: a guardian can access the “school record” but only if doing so would not be an unreasonable invasion of the student’s privacy.
 - if the student is either:
 - 18 years old or older, or
 - 16 years old or older, and either lives independently or is under a certain support agreement with the Director of Child Welfare,
 then a guardian can only access the “school record” with the student’s consent.

This rule only applies for the “school record”. The *Student Record Regulation*, one of the regulations under the *School Act*, specifically says that a “student record” must not include:

- notes and observations prepared by and for the exclusive use of a teacher, teacher’s assistant, counsellor or principal, that are not used in program placement decisions, or

- counselling records relating to the student that are or may be personal, sensitive or embarrassing to the student, *unless* the school board deems it in the public interest or necessary to ensure the safety of staff and/or students.

For these types of information that must not be included in school records, the general FOIPPA rule applies for determining access rights.

For further information about the legal obligations in responding to access requests such as timelines, see Part 1, Division 1 of FOIPPA.

V. Accessibility of sexual health products:

What do I need to know if a youth asks how to get sexual health products?

In consulting with you about SRH issues, youths may ask you about the accessibility of sexual health products, for example in drug stores. It is important to know that Alberta law does not require store owners, managers or cashiers to check identification before selling condoms. Unlike cigarettes, for example, there is no age restriction for the purchase of condoms.

Some school boards may or may not support the distribution of condoms within the school setting. Teachers and school counsellors should consult the policies for their school districts.

Sexual health products such as spermicides and sponges may be kept on the store shelves or behind the pharmacy

counter. These products may be kept behind the pharmacy counter due to legal requirements, pharmacist preference and/or lack of shelf space. The pharmacist usually interacts with the customer regarding the use of a sexual health product when such products are kept behind the counter.

For sexual health products available only with a prescription, such as birth control pills or the emergency contraceptive pill, pharmacists will likely review usage information and answer any questions the youth may have, as they do when dispensing any prescription medicine.

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