

A student record, as defined by *The Public Schools Act*, Section 42.2, is “a record or 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” or “recorded information” means a record or information in any form, and includes information that is written, photographed, recorded or stored in any manner, on any storage medium or by any means, including graphic, electronic or mechanical means, but does not include electronic software or any mechanism that produces records.

The collection, use, protection, retention, and/or disclosure of information contained in student records shall be in accordance with the requirements of *The Public Schools Act*, *The Personal Health Information Act (PHIA)*, *The Freedom of Information and Protection of Privacy Act (FIPPA)*, and the *Youth Criminal Justice Act* (formerly the *Young Offenders Act*), and other relevant provincial and federal legislation, as appropriate.

In circumstances not covered in the regulation that accompanies this policy, the procedures outlined in the “Guidelines on the Retention and Disposition of School Division/District Records (Revised January 2010)” will be followed.

Information: [The Public Schools Act, Section 42.1, 42.2](#)
[The Personal Health Information Act](#)
[The Freedom of Information and Protection of Privacy Act](#)
[Youth Criminal Justice Act](#) (Canada)
[Guidelines on the Retention and Disposition of School Division/District Records \(January 2010\)](#)
[The Child and Family Services Act](#)
[The Adoption Act](#)
[Manitoba Pupil File Guidelines \(Revised January 2012\)](#)

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1. Components

The student record is organized and separated into

- a cumulative student information file,
- a pupil support information file, and
- a Youth Criminal Justice Act file.

The Pupil file may be separated into individual sub-files by the above components.

All students will have a cumulative student information file. Some students who are receiving additional services from school clinicians and other resource services from within or outside the Division will have a pupil support information file. *Youth Criminal Justice Act* files exist for only a few students.

2. Collection of Information - General

- a. The Division will collect only as much personal information and personal health information as is necessary for the purpose for which it is collected. [Subsection 36.2 of *The Freedom of Information and Protection of Privacy Act* (FIPPA) and subsection 13.2 of *The Personal Health Information Act* (PHIA)]. The Division does not require the consent of the pupil or parent/guardian for the collection of student records.
- b. The information collected on students shall be related to
 - i. the provision of educational programs and services supporting the student's educational progress, and
 - ii. the requirements of *The Public Schools Act* or *The Education Administration Act* Miscellaneous Provisions Regulation or by other statutes of Manitoba or Canada.
- c. Information about a pupil involving offences and proceedings under the *Youth Criminal Justice Act* which is provided to the school division by a court, a peace officer, a youth worker, a government department, etc. and which falls under the *Youth Criminal Justice Act* shall be maintained in a separate file.
- d. Pursuant to Subsection 37(2) of FIPPA, and 15(1) of PHIA, the Division is required to provide the following information to the pupil and to the pupil's parents/guardians if the information is collected directly from them:
 - purpose for which the information is collected;
 - legal authority for the collection, and
 - title, business address and telephone number of an employee who can answer questions about the collection.

3. Storage

- a. Any part or parts of a student record 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.
- b. The Principal or designate shall ensure that the Pupil Support file, the *Youth Criminal Justice Act* file, and other confidential documents are kept in a separate, secure location that ensures confidentiality.

4. Maintenance of Files

- a. The Principal shall be responsible for setting up appropriate procedures and designating school staff to maintain up-to-date and accurate school records including cumulative, pupil support, and *Youth Criminal Justice Act* files.
- b. The Principal shall be responsible for an annual review and regular updating of all files. This includes culling of dated information and information that is no longer relevant. All files no longer required shall be shredded.
- c. The Principal shall ensure that records are kept confidential and access is provided only as stipulated in this policy.

5. Student Files

a. Cumulative Student File Component

Information in a cumulative file

These files exist for all students and may include the following information:

- i. 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/surnames by which the student is known.
- ii. Birth date of the student.
- iii. Student gender.
- iv. Manitoba Education (ME) number and any other student identification number assigned to the student by the Division.
- v. Name of the student's parent(s) and/or legal guardian(s).
- vi. Addresses and telephone numbers of the student and of the student's parent(s) and/or legal guardians.
- vii. The school division of which the student is a resident if different than the school division the student is attending.

- viii. Names of all schools attended by the student and the dates of enrollment, if known.
- ix. 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 documentation.
- x. Any health information that the parent of the student or the age of majority student wishes to be placed on the student record (e.g. allergy alerts, asthma, etc.) and optionally the Personal Health Information Number (PHIN).
- xi. 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 (e.g. report cards/transcripts).
- xii. Information about any behavioral misconduct and disciplinary measures meted out including suspension or expulsion relating to the student.
- xiii. Attendance records.
- xiv. Photographs.
- xv. Communication regarding the student between the home and school (e.g. discipline, behaviour, achievements).
- xvi. Indications of awards, prizes.
- xvii. A copy of any separation agreement or court order with respect to child custody issues, where applicable.
- xviii. Cross-reference listing that identifies the location of all information held by the Division about a pupil that includes an indication of the existence and location of pupil support information not housed in a cumulative file.
- xix. 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 of Trustees to all or a large portion of the students or to a specific grade level of students.
- xx. Any other assessment or evaluation that the parent or the student wishes to be placed in the cumulative file.
- xxi. The most recent Individualized Education Plan (IEP) and/or Health Care Plan specifically devised for a student and any amendments to these plans.
- xxii. Up-to-date notations or referrals to contacts with external agencies (e.g. Child and Family Services) or caregivers.
- xxiii. Admission advisement concerning whether the student has used or is continuing to use social service, psychological/psychiatric or counselling resources of any agency or of any school previously attended.
- xxiv. General information related to special funding.
- xxv. Notations of pullout for resource or challenge work.

Security Requirements

Section 41 of FIPPA requires that the Division protect personal information by making reasonable security arrangements against such risks as unauthorized access, use, disclosure, or destruction. The cumulative file component will be stored in a locked filing cabinet in the school office. Where the cumulative file component contains personal health information, the more specific security requirements in sections 18 and 19 of PHIA and the Personal Health Information Regulation must be adhered to by the school Principal.

b. Pupil Support File Component

Information

Pupil support files exist for some students and may include the following information:

- i. 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.
- ii. Ongoing health/psycho-social/counselling 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, counselling resources of any professional, of any agency, or of any school previously attended.
- iii. School clinician's reports and related correspondence, notes from meetings/discussions concerning intervention strategies, contact logs, and consultation notes.
- iv. Referral to other agencies and individuals.
- v. The results obtained on specialized diagnostic tests (e.g. WISC-R).
- vi. Reports from service providers such as agencies, hospitals, and clinics.
- vii. Reports and notes from behavioural specialists such as psychologists, psychiatrists or other therapists, if such documents exist.

Security Requirements

The information comprising the pupil support file component should be kept in a secure locked filing cabinet, separate and away from the cumulative file and the *Youth Criminal Justice Act* file. Pupil support information may be held in the school counsellor's office, and/or in the resource teacher's office, and/or in the Area/Division office. Documentation will be recorded in the pupil's cumulative file component stating that information on the pupil is being held in these separate locations and in a locked filing cabinet adhering to section 18 and 19 of PHIA and that the Personal Health Information Regulation is met.

c. **Youth Criminal Justice Act File Component**

Information

These files will exist for only a few students. Information collected regarding a young person gathered under the *Youth Criminal Justice Act* shall adhere to the *Act*. Persons who are authorized to disclose information in a record kept under Sections (114-116) about a young person to a school representative under subsection 125 (6) of the *Act* are the Provincial Director, a Manitoba Justice Youth Worker, the Crown Attorney's office and a peace officer, such as a police officer.

Security Requirements

The *Youth Criminal Justice Act* file component will be kept in a locked filing cabinet, separate and away from the cumulative file and pupil support file, in the case of records kept at the school. The Principal is the designated custodian of the *Youth Criminal Justice Act* file component and has the responsibility for the receipt and release, maintenance, protection and security of *Youth Criminal Justice Act* information.

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 Police Officers (February 2004)" prepared by Manitoba Justice and Manitoba Education, as well as Manitoba Pupil File Guidelines (Revised January 2012).

6. **Access to and Privacy of Records**

a. **General Requirements**

Unauthorized access to student records by a person who does not have the need to know is strictly forbidden. No unauthorized person shall have access to student records with the exception being the provision to police of such information as is required by law and in response to a subpoena. The Division will ensure that all staff are aware of the policies respecting access to student records.

Requests for access to the student records by pupils and their parents or legal guardians under *The Public Schools Act* will be handled at the school level.

Third party requests for access to information or requests for disclosure (for access to, or disclosure of, other personal information or personal health information) under FIPPA or PHIA will be directed to the Division's Access and Privacy Coordinator (Secretary-Treasurer).

b. **School Division Personnel Access to Student Records**

Access to and use of personal information in a student record by school division personnel is permitted to the extent that the information is necessary to assist in the education program of the pupil. Staff members may need to have access to different pieces of information in order to carry out their duties.

c. **Access under *The Public Schools Act***

- i. Pupils are not allowed access to their student records until they have reached the age of majority (the age of 18) (clause 42.3(1)(a) and clause 58.9(2)(b).
- ii. Pupils who are eligible to access their files can examine the information or obtain copies of the information but nothing may be removed from the file.
- iii. 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 parents or legal guardians to access the pupil file (clause 42.3(1)(a), subsection 42.3(3), subsection 58.1 and clause 58.6(c).
- iv. A school division employee who is competent to interpret the information must be made available to assist the pupil, parent, or legal guardian. Information in a pupil file can be examined or copied. Information may be denied if:
 - 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 the enactment.
- v. Students who have 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.

d. **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.

e. **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 *Youth Criminal Justice Act*. **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 *Youth Criminal Justice Act* (section 119 of the *Youth Criminal Justice Act*).

It is recommended that 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 these purposes.

f. **Rights of Access of Divorced or Separated Parents**

- i. 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.”
- ii. 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.”

g. **Access Under *The Freedom of Information and Protection of Privacy Act***

- i. Any pupil may request access to the student cumulative file in his/her student record.
- ii. 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.).
- iii. The Chief Superintendent can deny the access of a parent or guardian to the pupil file when, in the opinion of the division or district, the parent or legal guardian’s exercise of this right of access would constitute an unreasonable invasion of the minor’s privacy (see clause 79(d) of the *Act*). The grounds of 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.

- iv. The parent or legal guardian may make a complaint to the Manitoba Ombudsman about the 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.

h. Third Party Requests for Information Authorized by *The Freedom of Information and Protection of Privacy Act*

Any disclosure of personal information to a third party 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.

The Chief Superintendent may approve disclosure of personal information about a pupil (which is not personal health information and which is not young offender information) if:

- i. 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;
- ii. The disclosure is for the purpose for which the information was collected or compiled or for a use consistent with the purpose (clause 44(1)(a));
- iii. 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, or disclosure of names, addresses, etc., to a school attendance office under section 269 of *The Public Schools Act*;
- iv. Disclosure is necessary to protect the mental or physical health or the safety of any individual or group of individuals (clause 44(1)(l));
- v. Disclosure is for law enforcement purposes 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;
- vi. 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 youth court worker.

i. Third Party Requests under *The Personal Health Information Act*

Third-party requests for personal and personal health information may only be granted where authorized under FIPPA, Section 44(1), or PHIA section 22(2) or with consent of the pupil and/or parent/guardian.

Pupil and pupil support files may be transferred to another division as provided under subsection 29(3) of *The Education Administration Act*.

j. **Third Party Requests for *Youth Criminal Justice Act* File**

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 *Youth Criminal Justice Act*).

7. **Transfer, Retention and Destruction of Student Records**

a. **Transfer of Records to Another School**

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 is 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.

b. **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 Number assigned to the student will be retired and a new MET Number 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 students' new school.

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

- i. the student name, date of birth, and MET number of the student involved in an adoption placement proceeding,
- ii. the name of the social worker appointed as legal guardian of the student during the process of adoption placement,
- iii. the new adoptive identity and new MET number assigned to the student,
- iv. 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:

- i. create the new pupil file under the student's adoptive name and the new MET number with the de-identified information provided by the social worker,
- ii. retire the original pupil file to a secure location that ensures confidentiality of the file, and
- iii. 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.

c. **Youth Criminal Justice File Component**

The Youth Criminal Justice Act component of the student records shall not be transferred and shall be destroyed immediately when the court order is satisfied, or when the student leaves the school, whichever comes first.

d. **Retention of Student Records**

Student records will be kept for a period of ten (10) years beyond school departure or until the record is transferred to another school. Senior 1 to Senior 4 student marks will be retained for thirty (30) years. Schools are required to provide transcripts of marks free of charge to persons who are no longer enrolled.

e. **Destruction of Student Records**

- i. 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.
- ii. 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).
- iii. Where personal health information is kept in electronic form, the Division must ensure the security of the 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).
- iv. At the expiration of the retention period, records will be destroyed at the school under controlled confidential conditions unless deemed archival. Archival records are to be forwarded to the Division office with a list or summary of contents to the records manager. The records manager will file the summaries or lists in a disposition of records log. For purposes of this regulation, the records manager is defined as the Secretary-Treasurer for the Division.
- v. The *Youth Criminal Justice Act* file information must be destroyed immediately when it is no longer required for the purpose for which it was established (where the court order is satisfied), or when the student transfers to another school, division or district.

f. **Correction of or Objection to Information in the Pupil File**

Under section 42.5 of *The Public Schools Act*, 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 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*, Section 12 of *PHIA*).

8. Appeal Process Regarding Records

If a parent or guardian or age of majority pupil disputes the accuracy or relevance of contents and information in a file, a written request for review should be submitted to the Area Superintendent according to the following procedure:

- a. A written request for appeal, outlining the specifics of the dispute, shall be submitted to the Area Superintendent.
- b. The Area Superintendent shall render a decision, in writing, within two weeks of receipt of the requested appeal.
- c. The Area Superintendent's decision may be appealed to the Chief Superintendent by written request.
- d. The Chief Superintendent shall respond in writing within two weeks of receipt of the appeal.
- e. The Chief Superintendent's decision can be appealed to the Board of Trustees.
- f. The Board of Trustees shall respond in writing within two weeks of the receipt of the appeal.

Where a request for a correction is received but not acted upon by the Division, the Division is required to append the request for the correction to the file in question.

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