



Communicate student information: Prevent violence-related injuries to workers in the education sector

This bulletin concerns the requirements related to student privacy and worker health and safety that are set out by the *Workers Compensation Act* (the Act) and the *Freedom of Information and Protection of Privacy Act* (FIPPA).

This bulletin is for administrators, risk managers, principals, and other front-line supervisors employed by public bodies (for example, public school districts or universities). It is also for educators, support staff, health and safety professionals, worker representatives, and members of joint occupational health and safety committees.

The term *student* is used for those receiving educational services and includes their representatives, advocates, and family members.

Note: This bulletin does not contain legal advice. For additional guidance on student privacy, consult your supervisor, your employer's policies, your organization's freedom of information resources, and any relevant professional codes of conduct.

WorkSafeBC requirements

Section 115 of the Act requires that employers inform their workers about all known or reasonably foreseeable health and safety hazards, including workplace violence. Section 4.27 of the Occupational Health and Safety Regulation (the Regulation) defines violence as “the attempted or actual exercise by a person, other than a worker, of any physical force so as to cause injury to a worker, and includes any threatening statement or behaviour which gives a worker reasonable cause

to believe that he or she is at risk of injury.” These behaviours do not need to have intent to injure. Within the education sector, students who inflict physical force causing injury or engage in threats are sometimes referred to as “having behavioural challenges” or “acting out.”

Violent acts result in time-loss injuries to over 115 workers in British Columbia's education sector each year. Educators and support staff often report that violent incidents happen “out of the blue” or “without warning.” However, incident investigations frequently reveal that the student involved had a history, or a known risk, of violent behaviour that was not communicated to workers by way of assessments, individual education plans, or employee safety plans.

While educators and support staff regularly document student histories to facilitate educational objectives, they often don't share student information relating to known violence risks or triggers of violent behaviour. This is partly the result of confusion about privacy law, professional practice guidelines, and school district policy — confusion that puts educators and support staff at risk of injury.

Example: Some workers not informed of risk

An education assistant working casual shifts in a school was hit by a student. She had not been told about this particular student's risk of striking out or the details of the safety plan that had been developed to protect staff.

Privacy law requirements

Privacy law supports the sharing of student information in a way that respects an individual's privacy and yet allows worker safety to be protected.

In B.C., FIPPA governs the collection, use, and disclosure of personal information by public bodies. Sections 33.1(1)(f) and 33.2(e) of FIPPA allow for disclosure of personal information within an organization "if the information is immediately necessary for the protection of the health or safety of the...employee." Such disclosure is supported by the Office of the Information and Privacy Commissioner for B.C. (OIPC), which recommends using the "need to know" rule to ensure that "the right information reaches the right person at the right time for the right purposes" (OIPC Investigation Report P96-006).

The part of FIPPA that has been widely misinterpreted is section 22(3)(a). This section states that "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." Section 22(3)(a) does not prevent the sharing of information that is necessary to protect workers from the risk of violence.

Disclosure is required if you answer "yes" to the question "Is disclosing this information necessary to help protect this worker's safety?"

Employer responsibilities

Employers are encouraged to incorporate the "need to know" principle into their policies related to student information disclosure and to establish appropriate systems to communicate this information to protect their workers from the risk of violent behaviour.

Can student information be used for incident investigations and the work of joint occupational health and safety committees?

Yes. Employers are obligated to investigate incidents that caused or could have caused injury to their workers, in conjunction with a joint occupational health and safety committee.

Investigators need access to all relevant information to determine the causes of the incident and to make recommendations to prevent recurrence. Certain types of information must be shared or posted at workplaces, including the results of incident investigations and inspection reports. If student information is used to develop these documents, personal identifiers must be removed so that readers will understand the issue but not be able to identify the students involved.

Example: Information intentionally withheld (another school district)

When a student transferred from one school district to another, information about his violent behaviour was intentionally withheld because the administrators felt it was personal information that didn't need to be provided to the new school, often called a "fresh start." Shortly after his arrival at the new school, the student struck a teacher.

Can a public body disclose a student's personal information to another public body?

Yes. Section 33.2(e) of FIPPA allows for disclosure of student information by one public body to another "if the information is necessary for the protection of the health or safety of the...employee." Organizations should develop procedures and policies on how this information is to be shared and how the disclosure should be documented.

Education professional responsibilities

What is an education professional's obligation to protect student privacy?

Codes of conduct for all education professionals include a requirement to use student information appropriately and to follow all legislative requirements. For example, the Standards for the Education, Competence and Professional Conduct of Educators in British Columbia, established by the Teacher Regulation Branch of the Ministry of Education, state that "[teachers] respect confidentiality unless disclosure is required by law."

All professional codes of practice for those who work in the education sector — including teachers, social workers, occupational or physical therapists, and nurses — support disclosure of student information to prevent harm. For example, disclosure is required when abuse of the student is suspected or student self-harm appears imminent. Disclosure is also required to protect workers from the risk of violence.

Education assistants and other unregulated staff are still bound by the relevant legislation and their employers' policies relating to protecting student information.

What if there is a conflict between a professional code of conduct and the Act?

Legal requirements such as the Act take precedence over professional codes. Educational professionals are required to recognize where there are potential conflicts. Professional regulatory colleges can assist their members in this regard.

Example: Inappropriate culling of student records

A student transferred to a school from another school district. In the second week of school the student brought a knife and threatened his math teacher, shouting, "I told them at the last school I can't do math!" At the request of the student's parents, his history of threatening behaviour had been removed from his school files.

Student rights

Is a student's consent required for organizations to share personal information related to worker safety?

No. Consent is not required when information is being disclosed for worker safety. If a plan is developed to protect the health and safety of a worker, which also affects the health and safety of the student, there are requirements under the School Act to inform parents. However, parental approval is not required to develop and implement plans to keep workers safe.

Example: Risk from parents not disclosed

An itinerant speech language pathologist was not informed of the history of threats from a student's parents and met with them after school in his office alone to discuss test results. The parents threatened that if he reported the results to anyone they would find his home and "get him."

Does labelling a student (for example, "risk factors for violence are present") contravene the student's right to privacy?

No. Students are regularly given medical and behavioural labels such as "gifted," "allergic to peanuts," "has autism" or "has a learning disability." These terms do not violate a student's privacy.

Identifying students as having risk factors for violence and communicating the risk for violence is not unfair if the information describes the risk the student poses accurately, using factual and non-judgmental terms, and if the information is made available only to those who need to know. While this is personal information and sensitive in nature, the purpose of identifying and communicating the potential risk for violence is to protect those interacting with the student, not to assign blame or judge the student. When a risk for violence is communicated it needs to be accompanied by details about the nature of the risk and the interventions that minimize the risk of injury to the worker.

Can a WorkSafeBC officer ask to see a student's records?

Yes. Section 179 of the Act, relating to a workplace inspection by a WorkSafeBC officer, states that an officer may "inspect records that may be relevant and, on giving a receipt for a record, temporarily remove the record to make copies or extracts." An officer may also "require a person to produce within a reasonable time records in the person's possession or control that may be relevant." WorkSafeBC officers are only interested in seeing the part of the student's records that refer to issues that may put workers at risk. Information will continue to be treated as confidential while in the officer's possession. The employer should make a record of this disclosure.

Resources

WorkSafeBC Prevention Information Line

Contact the Prevention Information Line to:

- Report an unsafe condition or situation in a workplace
- Request a worksite consultation
- Get information about workplace health and safety issues
- Get information about the Regulation
- Report a serious incident or major chemical release

Call 604 276-3100 in the Lower Mainland or 1 888 621-7233 toll-free in Canada.

WorkSafeBC.com — Education sector

This web page provides information and resources on topics specific to education employers and workers.

www2.worksafebc.com/Portals/EducationSector/Home.asp

Educational sector eNews

Sign up for regular health and safety updates through the Educational Sector eNews. Subjects include regulation changes, new publications, upcoming conferences, and any other news that could be of interest.

www2.worksafebc.com/Portals/EducationSector/EducationSectorUpdates.asp?reportID=37072