

**GUIDELINES FOR PSYCHOLOGISTS  
WORKING IN SASKATCHEWAN SCHOOLS**

**Relating to Obtaining and Documenting Consent to Testing and Handling Personal Health  
Information under HIPA**

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## **Introduction**

Psychologists employed by school divisions have a crucial role to play in student education and in accommodating individual students who have intensive needs. In performing these functions, psychologists are required to administer psychological tests and provide other psychological services.

As members of the Saskatchewan College of Psychologists (SCP), psychologists working in schools are required to comply with SCP's *Code of Ethics* (Code) and the *Professional Practice Guidelines* (Guidelines) derived from the requirements of the Code. The Code requires that all psychologists obtain informed consent from any persons to whom they provide psychological services, including testing, except in the case of urgent need when informed consent would be obtained as soon as possible thereafter. In general the Code and Guidelines direct that Psychologists should obtain informed consent from all of those legally entitled to provide it. This is especially important in the case of parents/guardians of minors.

This Guide has been developed to assist psychologists employed in school divisions in Saskatchewan to conduct themselves in compliance with the Code and the Guidelines, recognizing that they provide their professional services to students in a school setting.

## **Obtaining Consent to the Provision of Psychological Services, Including Assessment and Testing**

### **What is valid consent?**

In order for consent to the provision of psychological services to be legally valid, the person giving consent must:

- have legal capacity;
- be acting voluntarily; and
- be informed.

### **How do I determine if the person providing consent has legal capacity?**

A person has legal capacity if the person is able to comprehend and understand the information provided about the psychological services for which the consent is required, to appreciate how that information applies to their particular situation, to compare alternatives available in a logical and rational manner, and to communicate a choice of alternatives.

Persons who are 18 years of age or more are considered adults and are generally presumed to have legal capacity to provide consent. Persons who are less than 18 years of age are legally minors and are generally presumed to lack legal capacity to provide consent. These presumptions can be rebutted in situations where adults lack capacity or minors have capacity, as described above.

### **Who must give consent?**

While the student is the client, most students are minors and do not have legal capacity to give consent. The student's parent(s) or guardian must therefore provide consent on behalf of the student.

Where there is no court order or agreement relating to custody of the student, *The Children's Law Act* establishes joint custody by both parents as the default position, and the consent of both parents is therefore required.

If there is a court order or agreement relating to custody, a copy of it should be obtained and:

- if custody is joint, the consent of both parents is required, whether or not they are separated and regardless of the length of time the child spends in the actual care of either one of them; or
- if one parent has custody, only the consent of that parent is required.

If the student is in foster care there will be either an agreement or a court order and a copy of it should be obtained. The terms of the agreement may reserve consent to the parent(s), even though the child is in foster care. If there is a court order, the Minister or the Minister's delegate must provide consent.

When a child is in the de facto care of a person other than a parent, the parent(s) who would otherwise be required to provide consent must provide written authorization allowing the person with de facto care of the child to provide consent and the authorization must include the following information:

- name of parent(s);
- name and birth date of student;
- name of person authorized by the parent(s) to provide consent; and
- date and signature of parent(s).

### **When is a child considered a mature minor?**

A mature minor student is a student who is:

- under the age of 18 years;
- has sufficient intelligence and maturity to fully appreciate the nature and consequences of the procedure to be performed for his or her benefit;
- understands the nature of the subject matter being dealt with in the assessment; and
- understands the implications of participating or not participating in the assessment.

The psychologist should only consider obtaining consent from the student where the student has requested the parents not be notified or the parents cannot or will not consent. In such situations, the psychologist must consider the following factors in concluding that a minor is capable of providing consent:

- the age and maturity of the student;
- the nature and risks of proceeding with the proposed assessment versus not proceeding; and

- any readily available information relating to the student’s intelligence, reasoning ability, state of mind, or other similar factors.

The psychologist should not attempt to contact the student’s parent(s) or a person to whom the parent(s) have delegated the authority to consent if the student is a mature minor and has specifically asked the psychologist not to do so, unless the health or safety of the student is at risk.

### **Adult Students**

A student who is 18 years of age or older is an adult and is presumed to be capable of giving, refusing, or revoking consent for psychological testing unless the psychologist assesses the student as lacking capacity as described above (**How do I determine if the person providing consent has legal capacity?**).

An adult student who has been diagnosed with a disability that impacts the student’s capacity to reason, understand or learn may be the subject of a court order authorizing some other person to provide consent.

### **What form must consent take?**

Consent can be implicit or explicit, verbal or written, but it must always be informed.

### **When can consent be implied? (Tier 1 Intervention - Response to Intervention Model)**

Implied consent may be given by the words or behaviour of the parent(s) or delegate in the circumstances under which psychological services are provided.

Implied consent is informed by the provision of information regarding the role of the psychologist as a member of the educational team. This information can be transmitted in many ways including by brochure and school newsletter.

Psychological strategies that are universal for student learning are considered fundamental to the education system and generally parent(s) or delegates, by sending the child to school, have provided implied consent to undertake all reasonable actions to provide the child with a quality education, which actions would include the following:

- universal screening (e.g. kindergarten screening);
- classroom recommendations for teachers (i.e. observing classroom and providing options for addressing attention concerns with a whole class as opposed to making mention of a specific student);
- education to teachers, educational assistants and other staff members on universal strategies.

### **When is explicit consent required? (Tier 2 and 3 Intervention -Response to Intervention Model)**

Explicit consent is required when a specific student is identified as being one who may require specific psychologist involvement beyond universal strategies. Explicit consent is required for psychologists to administer psychological tests or conduct formal or informal assessments that are necessary for education purposes, including the following:

- cognitive tests;
- tests or screens for neurological, achievement, behavior, executive function and mental health issues;
- screens for specific conditions, including Autism, Anxiety, Depression, or other disorders listed in the DSM-V;
- tests including WISC V, W-I, Wechsler Non-Verbal, BASC, Conners;
- student-specific classroom observation;
- review of the student's cumulative file;
- contact with other individuals or agencies regarding the student;
- personalized program plan involvement with a specific student;
- individual student programming;
- small group programming.

### **What exactly is informed consent?**

Informed consent is:

- *student-centered*, with the focus on the best interests of the specific student
- *specific* to essential and necessary education services
- *freely* made without fraud or duress

Informed consent results from dialogue and sharing of information between the psychologist and the parent(s) or delegate and, as appropriate, the student. The information provided during that dialogue would generally include:

- identifying and clarifying the concern(s) that gives rise to the need for psychological services and the specific nature of the services to be provided;
- disclosing the nature of the proposed involvement and evidence-based risks and benefits;
- disclosing how information gathered will be used and who will have access to it;
- the parent(s) or designate and/or student having the opportunity to ask questions and be satisfied with the answers;
- disclosing the consequences of not providing the proposed services;
- disclosing reasonable alternative forms of programming and their risks and benefits.
- addressing the parent(s)' or designates and/or student's individual concerns about the proposed services;
- if the psychologist's recommendations for programming (or part thereof) are to be implemented by persons other than the psychologist, advising the parent(s) or designate and student that others will be involved in the student's programming
- clearly documenting the informed consent process and any unique circumstances that are relevant; and

- having and following a process to obtain the informed consent.

Informed consent is valid until the services or the assessment for which the informed consent was received are no longer required by the student for educational purposes, unless the parent(s) or designate or mature minor or adult student rescinds consent in writing.

### **Is there any situation in which I can proceed without parental consent?**

If a parent / guardian whose consent is required does not provide consent, the psychologist can proceed in the case of emergency or, if after having consulted with colleagues, having considered the relevant issues listed below, and after engaging in an ethical decision making process the psychologist concludes that it is in the best interests of the student to proceed with the assessment.

Issues that must be considered:

- whether consent could not be obtained because the parent/guardian is not physically accessible;
- if the non-consenting parent / guardian is physically accessible, consideration of the reasons why they withheld consent;
- whether the assessment is necessary as it will contribute useful information that will assist with decisions that must be made regarding the student's educational placement or programming;
- whether the information necessary to make decisions regarding the student's educational placement could be obtained through other means;
- whether the referral information available is sufficient to provide a basis to justify proceeding with testing without parental/guardian consent;
- consideration of the Code and Guidelines and the views of colleagues in the profession, including the SCP; and
- the views of educational colleagues.

If the student is an adult with legal capacity or a mature minor, the psychologist can proceed with the consent of the student.

## **Documenting Consent or Refusal**

### **Documentation is an ethical requirement**

The Code also requires that psychologists appropriately document consent. As an employee of a school division, the psychologist should document that informed consent has been provided or refused according to School Division guidelines (e.g., paper record). Appendix A contains a sample form.

The original form executed by the psychologist should be housed in a separate and confidential file at the School Division's Student Services office or, at the School Division's discretion, in the student's cumulative file.

When an adult student or mature minor student provides consent or refusal, the psychologist should identify this fact in the documentation along with a brief summary of the reasons given in the case of refusal.

### **Written consent**

Any form of written documentation (e.g., electronic, consent form, handwritten note, written in pen or pencil) is acceptable provided it includes the following elements:

- student identification (name and date of birth)
- statement that the person providing consent has reviewed and understood the standard information
- statement of consent or refusal
- the psychological test(s) to be administered
- identification of any other psychological services to be provided
- date of consent and the end date of consent if appropriate
- name and signature of person consenting or refusing
- relationship to the student of the person providing consent for the student to receive services.

### **Verbal consent**

When consent is provided by telephone the psychologist should record the following information:

- student identification (name and date of birth)
- statement of consent or refusal
- name of psychological test(s) to be administered
- identification of any other psychological services to be provided
- date of consent and the end date of consent if appropriate
- name of person consenting or refusing
- relationship to the student of the person providing consent for the student to receive services.

### **Assessments, Psychological Tests, Raw Data, and Reports Held by School Divisions**

Psychological reports, psychological tests and raw data are legally the property of the Boards of Education that employ or contract with the psychologists to conduct psychological tests. However, psychologists employed with or contracted by Boards of Education are defined under *The Health Information Protection Act (HIPA)* as “trustees”, and have obligations to collect, use and disclose personal health information only in accordance with that Act.

The reports, raw data and any other personal health information must be kept in secure areas in School Divisions with limited access and can only be transferred to another trustee – typically, another psychologist. In addition, under the SCP Code and Guidelines, the psychologist has a responsibility to protect the integrity of tests and to ensure that information gathered through

their work is clear and not open to misinterpretation or misuse. Thus, in general psychologists must not release test protocols or raw test data to persons other than psychologists.

**Appendix A: Record of Obtaining Consent for Assessment**

*(Note: Complete a separate form for each person from whom consent is sought)*

Insert School  
Division logo and  
address

Student Name: \_\_\_\_\_ DOB: \_\_\_\_\_

**Contact**

Parent     Representative     Student

Name: \_\_\_\_\_

**Face to Face**

**Phone call**

Left message at telephone # \_\_\_\_\_ with \_\_\_\_\_

    ○ 1<sup>st</sup> call: \_\_\_\_\_

    ○ 2<sup>nd</sup> call: \_\_\_\_\_

**No answering machine**

    ○ 1<sup>st</sup> call: \_\_\_\_\_

    ○ 2<sup>nd</sup> call: \_\_\_\_\_

Date: \_\_\_\_\_

On behalf of the School Division, I have disclosed and discussed the following:

- reason for the School Division’s request for psychologist staff involvement
- methods of assessment
  - standardized: \_\_\_\_\_
  - individualized: \_\_\_\_\_
- Date of school visit: \_\_\_\_\_
- Disclosure of possible risks involved, if any
- Discussion of other options for service
- Discussion of consequences of not consenting in terms of the student’s education
- Discussion of what information will be gathered, how it will be used and who will have access to it
- Information provided regarding when and who will receive the report and that the person granting consent may contact the psychologist with any questions

Contact Summary

- Answered questions and concerns
- Parent, mature minor or adult student
  - Provided verbal consent for assessment
  - Declined verbal and/or written consent for assessment for these reasons:

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*(add extra notes below or on separate page(s) as needed)*

- Wishes time to consider assessment. Psychologist to follow up on \_\_\_\_\_
- Psychologist's School Division contact telephone number was provided
- Discussion that assessment is voluntary and optional
- Participant indicated understanding and appreciation of the nature of the conversation.

Comment(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Psychologist

Original executed form is filed on

- the student's personal file at Student Services or
- the student's cumulative record

Copy of this executed form is filed on

- the student's personal file held by the psychologist
- Other: \_\_\_\_\_

**ACKNOWLEDGMENT AND CONSENT**

I, \_\_\_\_\_, acknowledge that I have been provided all of the information indicated above with respect to the proposed provision of psychological services to \_\_\_\_\_ and I hereby consent to the provision of those services.

My consent applies from \_\_\_\_\_ (DATE) until \_\_\_\_\_ (DATE). I understand that I may withdraw my consent at any time with written notification to the School Division.

\_\_\_\_\_  
*Signature of person providing consent or psychologist authorized to indicate consent on the person's behalf verbally by telephone*

\_\_\_\_\_  
DATE