



Saskatchewan College of Psychologists

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Membership Advisory

Psychologists Working in Schools and Privacy Legislation

Understandably confusion exists for Psychologists working in Saskatchewan schools regarding which piece of privacy legislation they are ultimately responsible to. Legal counsel for the College provided legal opinions (2015, 2019) that stated that all members of the profession fall under the regulation of the Health Information Protection Act (HIPA), including those who are employed by a “local authority”. It is important to note that both the Local Authority Freedom of Information and Protection of Privacy Act (LAFOIP) and HIPA address the issues of confidentiality, privacy, as well as the collection, storage and access of information about individuals, and are not in conflict in terms of these important issues.

The legal opinions (2015; 2019) highlight the following important points:

1. Clause 2(t) of HIPA defines the term trustee under the legislation to include:

(xii) a person, other than an employee of a trustee, who is:

(A) a health professional licensed or registered pursuant to an Act for which the minister is responsible; or

(B) a member of a class of persons designated as health professionals in the regulations;

Psychologists employed by school boards are licensed or registered pursuant to the Psychologists Act, 1997, which is an Act for which the Minister of Health is responsible, they are therefore trustees under HIPA because their employer is not.

2. Psychologists are defined as trustees under HIPA. The College accepts that school boards **are not** trustees under HIPA.
3. Only those trained in psychology, who are working in identified universities and colleges in the province, and who do not practice or supervise practice are exempted under *the Psychologist’s Act 1997* Section 24(3), and are allowed to use the title “Psychologist” in their work as an academic without licensure. Psychologists working in Saskatchewan schools, other than those identified within the *Act* are not exempt from licensure, and consequently are not exempt from responsibility under HIPA.
4. HIPA prevails in the case of conflict with another Act:

Act prevails

4(1) Subject to subsections (3) to (6)3, where there is a conflict or inconsistency between this Act and any other Act or regulation with respect to personal health information, this Act prevails.

(2) Subsection (1) applies notwithstanding any provision in the other Act or regulation that states that the provision is to apply notwithstanding any other Act or law.

(3) Except where otherwise provided, The Freedom of Information and Protection of Privacy Act and The Local Authority Freedom of Information and Protection of Privacy Act do not apply to personal health information in the custody or control of a trustee.

Regardless of what school boards do, psychologists must comply with the requirements of HIPA. HIPA and not LAFOIP applies to psychologists and their handling of personal health information. LAFOIP speaks to the collection, storage, and access to personal information and HIPA speaks to those issues in regard to personal health information.

Legal counsel wrote:

“Since LAFOIP only applies to ‘local authorities’ and not to individuals, it does not apply directly to an SCP member who is employed by a local authority. However, if the employee is an SCP member then they would be a trustee under HIPA and HIPA would apply to them. So the client record could be personal information under LAFOIP in regard to the local authority and its obligations, and also personal health information under HIPA in regard to the SCP member.”

5. Under LAFOIP a school board may disclose information to other school boards when the information is to be used by the other local authority for a purpose for which the information was collected, that being the education of the student. This does not apply to the transfer of personal health information. HIPA prohibits disclosure of personal health information without consent, except to another trustee. Where a psychologist is disclosing information to a person who is not a trustee, such as another school board, HIPA requires a psychologist to verify that the information is going to a school board and that the recipient of the information is aware of the restrictions on its use.

Duty where disclosing to persons other than trustees

21 Where a trustee discloses personal health information to a person who is not a trustee, the trustee must:

- (a) take reasonable steps to verify the identity of the person to whom the information is disclosed; and*
- (b) where the disclosure is made without the consent of the subject individual, take reasonable steps to ensure that the person to whom the information is disclosed is aware that the information must not be used or disclosed for any purpose other than the purpose for which it was disclosed unless otherwise authorized pursuant to this Act.*

6. Although HIPA authorizes disclosure of personal health information when it is to be used for the purpose for which it was collected, similar to LAFOIP, it explicitly requires

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members of regulated professions to comply with the ethical requirements of their profession in doing so. Both the Canadian Code of Ethics for Psychologists and the Saskatchewan College of Psychologists Professional Practice Guidelines speak to a responsibility to protect the confidentiality of personal health information, protect client privacy, seek informed consent, and comply with all relevant legislation.

It is important for members of the College to understand that in the unfortunate event of a complaint, it is the standards of the profession against which they will be adjudicated.