



**Information and Privacy  
Commissioner/Ontario**  
**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

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# **INVESTIGATION REPORT**

## **INVESTIGATION I94-039M**

### **A SEPARATE SCHOOL BOARD**

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**March 13, 1995**



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## **INTRODUCTION**

### **Background of the Complaint**

This investigation was initiated as a result of a complaint concerning a named separate school board (the Board).

The complainants' child was a student attending one of the Board's schools. The child was referred by the Board to a Special Education Identification, Placement and Review Committee (the Committee) for an assessment. The Committee identified exceptional pupils and recommended suitable placements for them.

The complainants consented to the assessment because they wished to establish that their child had chemical sensitivities which affected his learning ability. The complainants hoped that the Committee would determine that a chemical-free environment would be the most suitable placement for their child. The complainants gave the Board written permission to contact their child's clinicians to collect their child's medical and mental health information.

An assessment was subsequently conducted. The child was identified as exceptional and recommendations were made with respect to a suitable placement for him. The complainants, however, did not agree with the Committee's determination and recommendations, and subsequently filed an appeal. A Special Education Appeal Board (the Appeal Board) was established to hear the appeal.

After the complainants appealed the Committee's determination, they informed the Board's Director of Education, by letter, that all medical and mental health information pertaining to their child would be treated by his clinicians as confidential, thus revoking their permission for the Board to collect any further information from the clinicians. A Board psychologist subsequently made an inquiry of one of the child's clinicians. He asked the clinician's secretary whether a status report on the child was available, and was informed that the clinician had not seen the child lately and that there were no reports.

The complainants maintained that the Board had collected their child's personal information without their consent, and that the collection was not in compliance with the Municipal Freedom of Information and Protection of Privacy Act (the Act).

### **Issues Arising from the Investigation**

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Was the Board's collection of the child's personal information in compliance with section 28(2) of the Act?

## RESULTS OF THE INVESTIGATION

**Issue A: Was the information in question "personal information", as defined in section 2(1) of the Act?**

Section 2(1) of the Act states in part,

"personal information" means recorded information about an identifiable individual, including,

- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The information in question which was provided to the Board's doctor by the clinician's office, was that no medical report about the child was available because the clinician had not seen the child.

It is our view that this information met the requirements of paragraph (h) of the definition of personal information in section 2(1) of the Act.

**Conclusion:** The information in question was personal information as defined in section 2(1) of the Act.

**Issue B: Was the Board's collection of the child's personal information in compliance with section 28(2) of the Act?**

The Board submitted that its collection of the child's personal information was in compliance with section 28(2) of the Act. This section states:

No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or **necessary to the proper administration of a lawfully authorized activity**. [emphasis added]

Regulation 305 of the Education Act sets out the powers and procedures of the Committee and Appeal Board. Section 4(1) of Regulation 305 indicates that a parent of a pupil who disagrees with a determination made by the Committee may give a written notice of appeal of the determination of the Committee and the Board shall appoint an Appeal Board to deal with the appeal.

In this case, after the Committee had made its decisions regarding the complainant's child, further to section 4(1) of Regulation 305, the complainants requested an appeal on the grounds of the decision of the Committee, and subsequently, the Board established the Appeal Board to hear the appeal.

The complainants indicated that it was their belief that when they had revoked their consent to the Committee to consult with their child's clinician, this would have prevented the Board from obtaining any further information about their child. The complainants further stated that it was their view that their child had missed an entire year of school, much to his detriment, as a result of the Board's collection of his personal information.

Section 28(2) of the Act does not list consent as one of the conditions under which personal information may be collected. Further, while section 2(3)(a) of Regulation 305 of the Education Act requires the Committee to obtain a parent's written permission before obtaining and considering a child's health and psychological assessment, section 7 of the Regulation, the comparative section at the appeal stage, is silent on this point. Therefore, there is no specific requirement for parental consent for collecting further information about a child at the appeal stage.

The Board advised that the Appeal Board relies on the parties, i.e. the Board and the appellants, to provide the information necessary to make its decision. Section 7 of Regulation 305 of the Education Act states in part:

- (8) **Any person who in the opinion of an Appeal Board may be able to contribute information with respect to the matters before the Appeal Board shall be invited to attend the discussion** and the discussion shall be conducted in an informal manner. (emphasis added)
- (9) **Where in the opinion of an Appeal Board all the opinions, views and information that bear upon the matters under appeal have been presented to the Appeal Board,** the Appeal Board shall adjourn the discussion and within three days thereafter may, ... (emphasis added)

The Board informed us that, at the time of its collection of the child's information, its staff were preparing for the complainants' appeal of the Committee's determination. The Board stated that, as part of the appeal process, its psychologist, in calling the clinician, "was merely attempting to confirm if the results of the psycho-educational assessment might be available in time for the appeal hearing."

The Board further stated that results from a psycho-educational assessment were regularly used as support information to the Appeal Board's deliberations when reviewing the recommendations of the Committee.

It is our view that further to section 7 of Regulation 305 of the Education Act, the parties to the appeal hearing should be permitted to place the relevant information before the Appeal Board to ensure that it will be in a position to make an informed decision.

It is also our view that the Board's preparation for the appeal hearing before the Appeal Board was a lawfully authorized activity of the Board. In this case, the Board had collected only the information that a report was not available because the clinician had not seen the child. No specific medical details were collected. As part of its preparations for the appeal hearing, it was necessary for the Board to confirm whether or not the report of the psycho-educational assessment would be available to the Appeal Board, since this information could be relevant to the Appeal Board's deliberations.

Therefore, in the circumstances of this case, it is our view that the Board's collection of the child's personal information was necessary to the proper administration of a lawfully authorized activity, and was thus in compliance with section 28(2) of the Act.

**Conclusion:** The Board's collection of the child's personal information was in compliance with section 28(2) of the Act.

## SUMMARY OF CONCLUSIONS

- The information in question was personal information as defined in section 2(1) of the Act.
- The Board's collection of the child's personal information was in compliance with section 28(2) of the Act.

Original Signed by:  
Ann Cavoukian, Ph.D.  
Assistant Commissioner

March 13, 1995  
Date

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