

INFORMATION SHARING BETWEEN PRINCIPALS AND SCHOOLS

(where an exemption to privacy law applies)

Background

Schools hold personal information (including health information) on each student enrolled.

The three major education sectors in NSW:

- the Association of Independent Schools (AIS),
- the Catholic Education Commission (CEC) and
- the Department of Education and Communities (DEC).

have jointly developed this high level guidance for principals about information sharing obligations to clarify the circumstances when information schools hold on students should, or must be shared. This includes when a student may be transitioning between schools, including between school sectors.

This document does not replace the documentation and resources developed by each sector to support decision making by principals regarding information sharing. It is general advice only. Legal and other advice may need to be sought in relation to specific circumstances.

School sectors will each develop a communication strategy to inform school leaders of the purpose and intent of this document and legislation.

What information do schools hold?

Schools hold a range of personal information on each of their students. This information will generally be within the meaning of state and commonwealth privacy legislation or health record privacy legislation.

In some circumstances schools will hold information that is relevant to the safety, welfare or wellbeing of a student, or information relevant to the assessment and management of health and safety risks to students or staff due to a student's history of violent behaviour.

It should be noted most non-Government schools are covered by *the Commonwealth Privacy Act 1988*. This Act does not prevent information sharing relating to the safety, welfare and wellbeing of children and young people and to students with a history of violence.

This means that schools in all three education sectors are positioned to exchange information on a student where it relates to the safety, health, welfare or wellbeing of a student or a student with a history of violence who is moving schools across the three education sectors.

Why is it important to share information?

Information held by schools may

- be helpful to support the safety, welfare or wellbeing of a child or young person
- assist another school to assess and manage health and safety risks due to a student's history of violent behaviour (particularly when a student is transitioning between schools, including between school sectors)
- support educational planning for students with additional learning and support needs.

The sharing of information to progress effective and cohesive student transition between schools and jurisdictions is a key responsibility of school principals.

What ways can information be shared?

There are four circumstances in which information can be shared within and between the three school sectors in NSW:

1. Sharing Information By Consent

This occurs when the parent (or depending on their age and/or capacity, the student) has consented to the information being shared. Consent of parents is typically sought as part of enrolment procedures. Consent is usually required when information is shared across state borders (see *The Interstate Student Data Transfer Note* below).

2. Sharing Information to Assist Decision Making Regarding the Safety, Welfare or Wellbeing of a Student

Provisions under Chapter 16A of the *Children and Young Persons (Care and Protection) Act* 1998 allow a school in NSW to provide another school in NSW with information it reasonably believes would be helpful for the safety, welfare or wellbeing of a child or young person. This applies within and between the school sectors. Schools can also request information from another school.

What type of information can be shared regarding the safety, welfare or wellbeing of a student?

This can include information about:

- a child or young person's history or circumstances including educational records, student welfare records or counselling records
- a parent, other family member or carer (as it relates to the child or young person or could impact on the school)
- any person/s having a significant or relevant relationship with a child or young person
- information about whether a person poses a risk to the safety, welfare or wellbeing of a child or young person
- the schools dealings with the child or young person, including past support.

What requirements must be met for a school to exchange information in these circumstances?

To exchange information the school must reasonably believe it would assist the other school in relation to the safety, welfare or wellbeing of the student or group of students to:

- make any decision, assessment or assist in the development of learning and support plans
- initiate or conduct an investigation
- to manage any risk to the student (or group of students).

It is not necessary for the school to receive a request from the other school – the law permits the information to be provided proactively.

The information gained must only be accessed by staff directly involved in decision making for the student (or group of students).

How should information received under Chapter 16A be handled and stored?

Information must be handled and stored in a secure way. A written record of exchanges of information under Chapter 16A should be made and stored in a way that is consistent with the existing legislation (including the *State Records Act 1998*, *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Protection Act 2002*).

3. *Sharing Information about Health and Safety Risks due to a Student's Violent Behaviour*

Power under Part 5A of the NSW Education Act 1990 allows government and non-government schools in NSW to exchange information that is relevant to the assessment and management of health and safety risks to students or staff arising from a student's history of violent behaviour.

Guidelines issued under Part 5A of the NSW Education Act 1990 provide direction on exchange of information in these circumstances. The guidelines are published on each sectors' internet site. Links are provided at the end of the document. Compliance with the guidelines is mandatory.

Schools can request information from other schools to assist them to:

- a) assess whether the new or continuing enrolment of a particular student is likely to constitute a risk to students or staff because of that student's violent behaviour; and
- b) develop and maintain strategies to eliminate or control a risk.

When can information about a student with a history of violent behaviour be requested by a school?

Part 5A of the Education Act provides:

- Information, as defined in the guidelines, can be requested once the potential risk posed by the student's violent behaviour is identified and the school is reasonably satisfied that another school may hold that information. This could take place prior to enrolment or after the student has started attending school. Information can also be obtained about a student after they have turned 18.

- When a student has:
 - been expelled from a school (government or non-government) or
 - had their enrolment terminated (non-government school only) and
 - is seeking enrolment in another school (government or non-government)
 the principal of the new school can request all information relevant to the assessment and management of health and safety risks from the previous school.
- The previous school must ensure the requested information is provided, using the template letter in the guidelines, once a request for information, has been received. This also applies when a student may be moving between sectors. Template letters for seeking information are provided in the Part 5A guidelines.

What are some examples of violent behaviour relevant to the assessment and management of health and safety risks?

Some examples include (but are not limited to):

- physical attacks
- carrying a prohibited weapon, firearm or knife
- attacks using an implement such as scissors or pens
- physical aggression or violence towards animals
- malicious damage
- self-harming behaviours.

Does the behaviour have to involve physical violence?

No. Behaviours, including but not limited to the following may be relevant:

- persistent verbal bullying
- repeated sexual harassment or use of racist, sexist or homophobic language or language mocking the disability of a student, member of staff or visitor to a school
- written abuse including:
 - writing threatening or abusive letters
 - graffiti targeting individuals or particular groups
 - bullying or harassment using text messages or email, posting on internet sites
 - making inappropriate videos, photographs or sound recordings and/or sharing or texting them and posting them on websites
- threats and intimidation
- physical stalking, or using technology (for example Facebook) for stalking.

4. Sharing Information where an Exception to Privacy Legislation Applies

Privacy legislation provides exceptions in particular circumstances in which information can be shared. This could include a medical or other emergency in which a person's life or health is under serious and imminent threat, or where disclosure is ordered or authorised by a court.

Exceptions for government schools are also found in the Department's Privacy Code of Practice. Child protection and law enforcement requirements constitute exceptions to privacy.

Can information be shared with other States and Territories?

It is important to remember that NSW laws only operate within NSW.

Information can be shared under the *Interstate Student Data Transfer Note*, provided parental consent is given (refer to 1 above). The *Interstate Student Data Transfer Note* is a national system for the transfer of student data between schools when children move from one state to another.

The type of information that may be disclosed includes attendance, health care needs, and areas of interest/talent, support needs, progress in specific learning areas and pastoral care and behaviour management.

Information on the *Interstate Student Data Transfer Note* can be found at:

<http://www.educationcouncil.edu.au/archive/Publications/ISDTN.aspx>

Links and Useful Information

[Children and Young Persons \(Care and Protection\) Act](#)

[Education Act 1990](#)

[Keep Them Safe – Information Exchange Factsheet](#)

[Child Wellbeing and Child Protection – NSW Interagency Guidelines](#)

[Interstate Student Data Transfer Note](#)

NOTE: this is summary advice only. Detailed advice is provided by each sector in relation to Privacy, *Keep Them Safe*, and *NSW Education Act Part 5A Guidelines*.

Sector Contacts

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Sector Specific Information and Links

[Management of health and safety risks posed to schools by a student's violent behaviour – guidelines](#)
(Association of Independent Schools)

[Management of health and safety risks posed to schools by a student's violent behaviour – guidelines](#)
(Catholic Education Commission)

[Management of health and safety risks posed to schools by a student's violent behaviour – guidelines](#)
(Department of Education and Communities)