

Chapter 13

Education and the Law

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Introduction

Most of the important decisions that schoolteachers make daily are guided by their professional knowledge, professional judgment, and even by common sense; but there is a constellation of predetermined legal rules that also must apply to some of these decisions. These rules most often deal with situations in which conflict of values arise—frequent occurrence since school teaching takes place in an increasingly more complex social setting with conflicting values. These conflicts may occur between teachers and parents, teachers and students, teachers and school administration, and even among teachers themselves. Whichever is the case, teachers face increasingly difficult decisions that call not only for the exercise of professional knowledge and professional judgment, but also for the application of legal rules, that is, laws.

These laws are important because, although they are subject to change, they contain at any point in time prevailing provincial values, which as such are enforceable by the courts. (See Table 1 for a summary of the major laws that form the legal basis of public school education in British Columbia). When conflicts arise these laws become an important point of reference and are applied in the resolution of conflict. They spell out, among other things, important aspects of the relationships among students, parents, and teachers. They also specify the legal functions, duties, rights, responsibilities, and liabilities of teachers and other school officials.

Teachers and other school officials are sometimes unsure of what these laws are and of the implications they hold for their professional lives. This uncertainty or lack of knowledge about the law sometimes renders teachers less effective as professionals, because it prevents them from taking necessary and appropriate actions in their students' interests, and even in their own interests.

For example, a teacher-counsellor who is unclear of the laws relating to student records may in good faith and on sound professional basis attempt to deny a parent or principal access to counselling notes made about a student. This denial of access may be on either or both of two grounds that are clearly reasonable but which may be unsupported by law at this time. Such a teacher may argue first that the notes are the teacher-counsellor's personal and, therefore, private record of information made to jog the memory. Second, the disclosure of information that was gained in confidence would violate the counsellor-client relationship. This could breed distrust and put students at jeopardy. They may thenceforth withhold trust and refuse to seek help. There is a need to protect the student's privacy at all cost. This example will be dealt with more fully later in this chapter, but it highlights here the need for professional values and legal rules to be considered jointly when such decisions are to be made. It is by no means clear that the law would support the teacher-counsellor's position in most cases.

Table 1. A summary of the legislation (with corresponding major feature) governing public education (K-12) in British Columbia.

LEGISLATION	MAJOR FEATURE
<i>Child, Family and Community Service Act, 1996</i>	Obliges any person who believes that a child is in need of protection to report to the director of Family and Child Service.
<i>Constitution Act, 1867</i>	Gives the Provincial Government exclusive authority to make laws related to education.
<i>Constitution Act, 1982 (Charter of Rights and Freedoms)</i>	Guarantees fundamental rights and freedoms to individuals.
<i>Criminal Code of Canada, 1985</i>	Decriminalizes reasonable use of force by school authorities for purposes of correction.
<i>Criminal Record Review Act, (1995)</i>	Makes criminal record checks mandatory for all current /prospective employees who work with children in agencies that are operated or licensed by or receive funding from the Government.
<i>Infants Act, 1996</i>	Gives a child under 18 the right of access to health care without parental consent.
<i>Freedom of Information and Protection of Privacy Act, 1996</i>	Gives right of access to public information while protecting the privacy of personal information held by public bodies (schools and boards).
<i>Human Rights Code, 1996</i>	Provides protection for human rights of all British Columbians.
<i>Labour Relations Code, 1996</i>	Governs employer-employee labour relations.
<i>Ombudsman Act, 1996. (The Ombudsman's jurisdiction over education was proclaimed in 1992)</i>	Provides for investigation of complaints against public schools and school boards.
<i>Public Education Labour Relations Act, 1996</i>	Provides for a two-tiered system of collective bargaining between boards and teacher unions.
<i>School Act, 1996; School Act Regulation 1989; Ministerial Orders, 2004</i>	Governs the provision and delivery of public school education.
<i>Teaching Profession Act, 1996</i>	Provides for the regulation of the teaching profession by the College of Teachers.
<i>Youth Criminal Justice Act, 2002</i>	Provides for young persons (12 to 18 years old) who commit crimes within federal and provincial jurisdiction.

Teachers and other school officials may sometimes be unclear of the content of the laws relating to schools and schooling, and of the implications these laws hold for their professional lives. This ignorance of the law exacerbates problems that occur naturally when individuals with differing roles, duties, responsibilities, and powers under an *Act*, and with differing personal interests and values, are required to collaborate. The primary purpose of this chapter is to provide all helping professionals, and especially public school teachers, with basic information about the law as it relates to the full and proper role of teachers.¹ First, the chapter presents in summary form legislation and policy defining the roles assigned to teachers, parents, the principal, the school board, and the Minister. Second, the chapter highlights for discussion some of the major areas of conflict, tensions, and uncertainty when teachers interact with others, and attempts to clarify the law related to the education of children. The chapter concludes with an attempt to answer several common questions asked by teachers and other educators.

In pursuit of these ends, the following section will present the law regarding the rights/entitlements, responsibilities, duties, and powers, where applicable, of parents and students, teachers, principal, Minister, and school boards in British Columbia. Professionals who read this chapter will find information designed to improve their understanding of the law and to help them function in a more legally defensible and professionally responsible manner. The law is stated as of November 2005.

Rights, Responsibilities, Duties, and Powers

Parents and Students

Although the *School Act*, 1996² (hereafter referred to as the *Act*) technically provides for *entitlements* rather than *rights* of parents and students, functionally rights and entitlements are the same. Some of these are given exclusively to parents, others exclusively to students, and yet others to both parents and students. In practical terms, however, it is not always possible to separate exclusive student entitlements from those of their parents, as most often a parent acts as a child's advocate before the law when issues related to his/her rights or entitlements arise.

Students are entitled in the *Act*:

- a) To enrol in an educational program provided by the board of the school district in which they live;³
- b) To enrol in an educational program in any public school in British Columbia, if there is space;
- c) To consult with a teacher or principal, vice-principal or director of instruction regarding her/his educational program;⁴
- d) To receive an educational program in English⁵ and
- e) To receive an educational program in French where parents have a right to have their children receive instruction in French under the *Charter of Rights and Freedoms*.⁶

With these entitlements to students come two primary responsibilities, namely:

- a) To comply with the rules authorized by the principal and with the code of conduct and other rules and policies of the board; and
- b) To participate in the educational program.⁷

Failure to comply with either of these are the only grounds upon which a board may refuse to offer an educational program⁸ to a student who is 16 years of age or older. There are no provisions that permit refusal to offer an educational program to a student under 16 years of age.

Parents are entitled in the *Act*:

- a) To information on a student's attendance, behaviour, and progress. Reporting by teachers to parents must occur at least five times during the school year—three written reports and at least two informal reports;⁹
- b) Upon request, to the school plan for the school and the accountability contract for the district;¹⁰
- c) To membership on a parent advisory council (PAC). A PAC may advise the board and the principal and staff respecting any matter relating to the school excluding matters assigned to the school planning council;¹¹
- d) To consultation regarding the placement of a special needs student in an educational program; and¹²
- e) To provide volunteer services in accordance with district policy.¹³

The policy of the Ministry of Education toward a special needs student and his/her parents is clear. Parents are to play a vital partnership role with educators and other service personnel in the education of their children. A parent is to be an active partner in the decision-making process related to special needs students, because this process works best when there is collaboration and ongoing consultation among teachers, administrative and support personnel, parents, and students. The current policy, as contained in Ministry of Education policy and procedures manual, requires that the parent is to:

- a) Be involved in all phases of program planning, development and implementation;¹⁴ and
- b) Be involved on a case-by-case basis as a member of the school-based team set up to plan and provide support for the development of the individual education program (IEP) and for classroom strategies.¹⁵

With respect to the working relationship between teachers and parents of special needs students, the onus is on teachers:

to maintain the ability to manage their classrooms while respecting the advice and role of parents. If disagreements occur, they may be resolved through a review of the IEPs to determine how classroom activities can best relate to the goals established in the IEPs. As is currently practised, every attempt should be made to resolve differences at the school

or district level. Additionally, under section 11(2) of the *School Act*, all districts are required to have appeal processes.¹⁶

While all parents may or may not choose to consult with an educator about their children's progress, they are obliged to consult if requested to do so by a teacher or principal, vice-principal or director of instruction.¹⁷ It does not seem, however, that, on the face of the law, the intention in the *Act* is to force parents to comply with this duty. Parents who do not comply with a teacher or principal's request to come in and consult appear to be able to do so without any legal consequences. However, it should be noted that, technically, failure to comply might be considered punishable under the *Offence Act*.¹⁸ By contrast, parents who refuse to register a child who is being schooled at home face serious consequences under ministerial orders.

Ministry of Education policy, announced as an Order-in-Council, gives the parents with a child in a school the following rights, option, and responsibilities:

- a) The right to participate in the process of determining the educational goals, policies, and services provided for their children. Correspondingly, they have the *responsibility* to ensure that children are provided with the healthy and supportive environment necessary for learning. Also, they have the *responsibility* to help shape and support the goals of the school system and to share in the tasks of educating their young.
- b) The right to enrol their children in a registered independent school of their choice, and the corresponding *responsibility* to ensure the curriculum and programs offered are of suitable quality.
- c) The option to school at home with the corresponding *responsibility* to register their children in a public school or independent school, or a correspondence or regional school.¹⁹

It is not yet clear what is the status of these rights, which appear to offer substantially more than all parents are entitled to under the provisions of the *Act*.

With respect to rights jointly held, parents and students each have all the rights and freedoms guaranteed by the *Charter*. In addition, under the *Act* they are entitled equally to do the following:

- a) To examine all student records pertaining to that student; and
- b) To receive a copy upon payment of a fee to cover the cost of copying.²⁰

Also, either parent or student may separately (and reasonably, jointly) appeal a decision or indecision of an employee of a board that they perceive as significantly affecting the education, health, or safety of the student.²¹

These expressly given entitlements, options, and responsibilities, particularly those to parents, are of historic significance. They mark the first time in post-Confederation British Columbia that parents have gained legal recognition in the education of their children. The fact that these entitlements are so recent in origin seems to go a long way in explaining why several

of the current areas of conflict for teachers centre on parental exercise of these newly gained entitlements.

Teachers

At the Constitutional level, teachers, like all Canadians, have all the individual rights and freedoms guaranteed by the *Charter*. In addition, they have all the employment rights, responsibilities, and entitlements negotiated in the collective agreement under the *Labour Relations Code*.²² The *Act* and *Regulation* to the *Act* lay out clearly the duties and responsibilities of teachers; however, it is the collective agreement that specifies precisely how teachers carry out their legal duties. In addition, it specifies the consequences that will follow a board's exercise of its legal powers over a teacher.

A teacher's responsibilities include designing, supervising, and assessing the educational program, and providing instruction to individual students and groups of students. A teacher's primary duty includes:

- a) The provision of instruction and other educational services;
- b) Assistance with the supervision of students;
- c) Ensuring that students understand and comply with the rules of the school and with the code of conduct of the board;
- d) Maintaining school records; and
- e) Providing parents regularly with progress reports on students.²³

Note too, that the *Child, Family and Community Service Act* provides that a person "who has reason to believe that a child needs protection must promptly report the matter to a director (of the Ministry for Children and Families) or a person designated by a director."²⁴ This provision relates specifically to protecting children from physical and emotional harm, sexual abuse and exploitation, and abandonment.²⁵

The *Teaching Profession Act*²⁶ (*TPA*) and the professional *Code of Ethics* established by the British Columbia Teachers' Federation²⁷ both deal with some aspects of inter-teacher relationships. The *TPA* establishes the College of Teachers that is charged (among others) with the responsibility of establishing standards for the education, professional responsibility, and competence of teachers, and with the discipline of its members. The College may initiate disciplinary action against a member under all or any of the following three circumstances:

- a) Upon the receipt of a report from a board of a public school or an authority of an independent school that it has dismissed, suspended, or otherwise disciplined a member, or that the member has resigned and the board/authority considers that it is in the public interest to report the resignation,²⁸
- b) Upon a receipt of a complaint made against a member in writing and signed by five members; or
- c) Upon the receipt by the Registrar of the College of a report relating to the conduct of a member.²⁹

A relevant tenet of the *Code of Ethics* is that a teacher be “willing to review with colleagues, students and their parents/guardians the quality of service rendered by the teacher and the practices employed in discharging professional duties” (*Code of Ethics*, item 4). Also relevant to later discussion in this chapter is item 5, namely:

A teacher directs any criticism of the teaching performance and related work of a colleague to that colleague in private and only then, after informing the colleague in writing of the intent to do so, may direct in confidence the criticism to appropriate individuals who are in a position to offer advice and assistance.

A footnote points out that the reporting of suspected child abuse to the proper authorities according to legal requirements under the *Child, Family and Community Act*³⁰ does not constitute a breach of this item of the *Code*.

The Principal

A principal is responsible for the administration and supervision of a school. This responsibility includes:

- a) The implementation of educational programs;
- b) The placing and programming of students;
- c) The timetables of teachers;
- d) The maintenance of school records;
- e) The general conduct of students; and
- f) Student evaluation and assessment, and reporting to parents.³¹

In addition, there are specific duties. These include a duty to evaluate a teacher and to report to the board,³² to make recommendation to the Superintendent respecting dismissal or discipline, the assignment and reassignment of teachers,³³ dismissal or discipline,³⁴ and to represent the board when meeting with the public.³⁵ Also, it is a principal’s duty to report on a teacher’s work and the learning situation in the teacher’s class, if so requested by the College of Teachers.³⁶ With regard to student discipline, the principal has paramount authority and may suspend a student in accordance with the rules of the school and rules and policies of the board, if the board does not expressly forbid such action on a principal’s part.³⁷

The Minister

The Minister, by law, has overall responsibility for the maintenance and management of public schools. In addition, the Minister has complete and final powers over the educational programs, or the curriculum. Specifically, the Minister has power to make orders:

- a) Governing the provision of educational programs;
- b) Specifying educational program guides;
- c) Governing educational resource materials used in support of the programs;
- d) Determining the requirements for graduation from an educational program; and
- e) The assessing and reporting on the effectiveness of educational programs.³⁸

These powers are viewed by the BC Teachers Federation (BCTF) as excessive, and it has called for their repeal.³⁹

The School Board

Responsibility for the provision of schooling lies at the local or district level. In accordance with the *Act*, a school board has responsibility for determining the local policies and rules in each school district. In addition, the board is responsible for providing educational programs, for establishing a code of conduct for students and for rules related to suspension, for the hiring and the grounds for discipline of teachers, and for assignment and reassignment of students to programs and specific schools.

Areas of Conflict

This section of the chapter highlights conflicts that currently stem from the intermeshing of the roles, responsibilities, and powers of the various functions described above. These conflicts seem to fall generally into two categories: those stemming from confusion or uncertainty about parental entitlements and powers; and those stemming from confusion or uncertainty about teacher duties, responsibilities, and professional relationships among themselves.

Conflicts Respecting Parental Entitlements

In the wake of the current provisions of rights and entitlements for parents, conflicts surrounding the parental role have become more frequent than they have been formerly. Such conflict often centres on:

- a) The involvement of parents in the preparation of *individual educational programs* (IEPs) for special needs students;
- b) Their demand for accurate, reliable progress reports on their children;
- c) Their request to have their children excused from certain subjects or classes;
- d) Their attempts to gain access to information about their children's teacher; and
- e) Their efforts to appeal decisions they consider not in their or their children's best interest.

These are dealt with in order below.

Teacher-parent tensions and the preparation and delivery of an Individual Education Plan (IEP)

The development and implementation of an IEP is a significant potential source of tensions between a parent and the teacher. Current requirements seem to put teachers on the frontier of a change in policy that is a significant departure from tradition. This change puts a strain on the exercise of professional autonomy as parents assume decision-making powers not formerly held.

At the heart of the *Act* is the *educational program*—an organized set of learning activities that, “in the opinion of the board, is designed to enable learners to develop their individual potential.”⁴⁰ As noted in the summary of the relevant provisions presented in the section above, all students are entitled to receive an educational program. The Minister has power to determine all aspects of the educational program,⁴¹ a school board is obliged to provide a program for a student, a principal is responsible for implementing the program at the school level, and it is a teacher’s duty to deliver the program.

There are special provisions for the educational program of *special needs students*. Special needs students are those who have either (1) a disability of an intellectual, physical, sensory, emotional, or behavioural nature, or (2) a learning disability, or (3) exceptional gifts or talents.⁴² These students are entitled to an *individual* educational program (IEP). This program differs from the regular program in three ways: first, it is tailor-made for the student; second, expectations and outcomes generally established for students in the regular program may be modified or adapted, or both, to meet the needs of the student; and third, a parent has a legal right to participate actively in all phases of its development and delivery.

This right exceeds those of parents of students without disability or exceptional gifts, and teachers have not been traditionally accustomed to having parents participate at this level. Furthermore, although this policy is laudable and necessary, it challenges a teacher’s freedom as a professional. In some cases difficulties with its implementation are now evident. As professionals with autonomy in their classrooms, teachers have been unaccustomed, before now, to sharing with parents (their clients) the business of “diagnosis” and “prescription,” that is, the act of identification and assessment of problems and of determining the policies, goals, and services to be provided a student, and the strategies to be used in the provision of the services.

Some teachers are likely to feel fear, either because of the lack of a tradition of such a relationship or of the lack of relevant training. Others may feel resentment because of the extra burdens these requirements entail. Yet others may feel a loss of face in those instances in which they may be dealing with parents who might have garnered over the years more knowledge of a child’s disability or area of exceptionality than the teacher has, or may, in the teacher’s view, be overly zealous or unrealistic about a student’s future. These will likely continue to be major sources of conflict.

In summary, two things seem clear: first, a parent has the right to participate actively in all important decisions regarding special needs students; second, the Ministry perceives that the onus is on teachers to find the point of balance between their role and that of parents. Such a point of balance might become clearer over time with more specialized training and in carefully worded contract language.

Teacher-parent conflicts respecting reports

Parent-teacher conflicts respecting reports on the progress, behaviour, and attendance of a student seem to be largely a matter of particular interpretation by each of statutory provisions for these reports. There seems to be scope for error on both sides.

In law a teacher has a duty to provide reports on a student, and a parent is entitled to these reports. There are to be three mandatory written reports, and *at least two informal* reports. Further, the professional *Code of Ethics* requires that a teacher be willing to “review with parents/guardians the quality of service rendered by the teacher and the practices employed in discharging professional duties” (*Code of Ethics*, item 4).

The mandatory written reports appear to be less of a potential source of conflict than the informal reports. The law is clear about the number of formal reports and about what they should contain. This form of reporting has also had a long-standing tradition and legal history. By contrast, although there have traditionally been informal reporting to parents, *informal reports* have only recently been legislated, and the law is less specific about what they should contain and about how many of them should there be. Areas of conflict, therefore, are more likely to arise around them.

There are several examples of instances in which this might be the case. Conflict might arise:

- a) When a parent insists on a right to talk to a teacher whenever, or as many times as, he/she wishes to do so;
- b) When a parent who does not have legal custody of a student attempts to get information about a student;
- c) When a parent of a truant high-school student seeks almost daily reports in the attempt to gain greater control over attendance; or
- d) When a teacher chooses to interpret the statutory provisions more narrowly than more broadly by attempting to set limits on the number of informal contacts a parent may have.

It seems clear that it is only a legitimate parent under the *Act*—that is, a guardian, a person legally entitled to custody, a person who usually has the care and control of the student—who has the right to reports on a student. Hence, it seems that a teacher may legally, and perhaps rightly ought to, refuse to give information to a biological parent who has neither legal custody, nor guardianship, nor usual control of a student.

A parent who insists on greater than average contacts with a teacher (especially if these contacts are confrontational) may, in fact, be harassing a teacher. There may be need for school boards to develop policy and guidelines to help provide guidance both to parents and teachers. The professional position on the matter seems clear. A teacher who either refuses to talk with parents or, without good reason, is too legalistic in interpretation of the provisions for information to parents may be in violation of the law or may be breaking the professional *Code of Ethics*, or both.

Parental right to have a child excused from certain classes or courses

Parents do not have a statutory role in curriculum matters nor are there statutory provisions in the *Act* or the *Charter* that, per se, give a parent a right to withdraw a child from a class or a course. Furthermore, although it seems that there may be scope for the board to

develop policy on the basis of which a parent may receive permission to have a student excused from portions of some classes, there may be limits to exemption from whole courses of study.

Under the *Act* the Minister, by order, sets the programs for study (for example, Fine Arts, Language Arts, Social Studies, and Mathematics) and provides the guides to these programs (for instance, Drama 10 Curriculum Guide, Composition 11 and 12 Curriculum Guide, Economics 12 Curriculum Guide, and Mathematics Grade 7-12 Curriculum Guide).

Program guides set out the expected learning outcomes for each program of study and for each subject at each level of the school system. These guides also set out the requirements for graduation from each program. The specific content of a course, however, is first a matter of board policy and second a choice by the teacher in the classroom. A student must participate in the educational program provided by the board, and participation clearly includes working towards graduation.

The courts have long confirmed a province's powers under the Constitution to make decisions like these about education. By way of balance, however, the Supreme Court of Canada has endorsed a parent's right under the *Charter* to educate according to her/his own conscience and religion⁴³ and to choose from among alternatives that meet reasonable standards set by a province.

Accordingly, under the *Act*, parents may choose to educate their children within the public system or outside the system at home or in independent schools. When they choose to opt out of the public system, they have power under the *Act* to decide upon the curriculum the child follows.

On the contrary, as noted earlier, parents who have opted for the public system forfeit the power to make unilateral decisions about students' curriculum. It seems clear that their children must follow the program of studies developed by the Minister and provided by a board. In these cases it seems that students may not be exempt from a course determined to be a requirement for graduation.

When all these points are taken into consideration, it seems that there may be scope for local boards to develop policy and rules to accommodate parents who wish, for reasons of religion and conscience, to have their children exempted from portions of classes as long as they are later able to satisfy the expected learning outcomes required for graduation from each level.

Teacher-parent conflicts respecting right of access to a teacher's record

Sometimes a parent may fish for information about a teacher in the hope of finding material to build or refine a case he or she is attempting to make against that teacher. Such a parent may have a disagreement with the teacher and may suspect that the teacher's file contains information that would be help to advance the parent's position. Because the policy of government is toward openness and easy access to information held by public authorities, some parents mistakenly believe that they have a right of access to a teacher's personnel file. The law

that grants freedom of access to information equally protects privacy and specifically personal information in the keeping of public bodies.

The *Freedom of Information and Protection of Privacy Act (FIPPA)* generally gives a person “the right of access to any record in the custody or under the control of a public body, including a record containing personal information.”⁴⁴ It empowers the head of a public body (in this case a school board)⁴⁵ to disclose such a record to a third party (in this case the parent) only under the following conditions:

- a) With the consent of the individual (teacher in this case);
- b) If it is subpoenaed or ordered by a court;
- c) To an officer/employee if the information is necessary for performance of duties (sections 33(b), (e), (f)).

Since the parent is neither an officer nor an employee who needs the information for the performance of a duty, nor has the consent of the teacher, there seems to be no legal basis for gaining access to a teacher’s file. Such access would be an unreasonable invasion of privacy. The Privacy Commissioner has ruled on such a case.

Conflicts/Issues Respecting Teachers

A teacher’s right to have a violent offender in classroom identified

Although the *Youth Criminal Justice Act*⁴⁶ (*YCJA*) provides generally for the protection of the privacy of young offenders, it also provides for disclosure of information about young offenders to professionals including teachers and other school officials. However, this provision for disclosure is limited, and it does not seem to guarantee that teachers with young offenders in their classroom will necessarily have easy or automatic access to information about these students.

The *YCJA* forbids all publication of any report that identifies a young person who may have or is alleged to have committed an offence. It also forbids the publication of any hearing or decision or appeal concerning a young offender in which the identity of the young person is made known.

There are some exceptions to this general rule, however. Information about a young offender may be disclosed to “a professional . . . engaged in supervision . . . of a young person, including the representative of any school board or school”⁴⁷ where that disclosure is deemed necessary for either or all the following reasons:

- a) To ensure compliance of the young offender with a court order; or
- b) To ensure the safety of staff, students; or
- c) To facilitate the rehabilitation of the young person.

Further limits on disclosure are set in the requirement that a person to whom information is disclosed for the reasons stated above:

- a) Keep that information separately from the student's school records;
- b) Ensure that no other person has access to it; and
- c) Destroy the information when it is no longer required for the purpose for which it was disclosed.

Youth workers are required by law to make reports that would normally include school attendance and performance records of a young offender for whom the court ordered school attendance. Therefore, a principal and a superintendent as representatives of a school board may be required to report to a youth worker on a young offender's attendance and performance in school. Note that this reporting does not seem necessarily to require the disclosure of *all* information about the young offender.

In the interest of ensuring the safety of staff and students, a principal as well as a teacher may sense a need to have the identity of a young offender in the school or classroom disclosed. While the law presented above provides for disclosure where safety of staff and students is at stake, there seems to be a strong argument that disclosure may only be legally justified when the risk is demonstrably clear and when it can be established that disclosure is not merely a precautionary measure. Even where risk to safety can be demonstrated, disclosure of important details of the student's case may not be necessary. For instance, where a student has been convicted of a violent offence and has been ordered by the court to attend school, it seems in keeping with the spirit of the law that a teacher be made generally aware of the fact that there are legal issues in the student's life but not of the specific details.

The rules that will govern the implementation of the disclosure to school officials will need to be clarified in regulation and school board guidelines.

Common Questions

1. Does a student have a right to be in school despite her/his behaviour?

A school board has legal grounds to refuse to offer an educational program to a student, *16 years and over*, who does not obey school rules, or comply with the code of conduct or policies of the board, or does not participate in the educational program. To be legally enforceable, however, the process by which a board refuses to offer a program to a student must be fair and just.

On the contrary, students *under 16 years of age* (that is, still within compulsory school age) who misbehave in these ways may not be similarly refused an educational program. A board has no statutory grounds upon which to refuse to offer them an educational program. In both cases, over and under 16 years of age, the law provides for disciplinary action which could include suspension.

Note that, technically, children in British Columbia of school age (5 to 19 years) have no right to be in a *school*, but, rather, they have the right to enrol in an educational program. For most, this educational program is offered in a school. For others, it may be offered in a hospital,

a detention centre, or, if homebound, at home. A board has the power to assign and reassign students to specific schools.

While the board has final powers over suspension and over whether or not a school continues to offer a student an educational program, a principal may also suspend a student according to the rules of the school if board policy does not forbid such suspension.⁴⁸ The principal has paramount authority over discipline in school. In all cases of suspension, the student must continue to receive an educational program. In the case of a younger than 16-year-old student, a board has some options. It may design an individual program to help deal with the student,⁴⁹ or assign the student to a special school. It must, however, continue to provide him/her with an educational program.

2. What are the rights of a student who has been suspended from school?

A student may legally be suspended from school by a board, a superintendent, or a principal. Although the *Act* provides for an appeal from suspension initiated by a principal or a superintendent (section 11), it does not provide for an appeal from a school board's decision to suspend a student. The principles of natural justice, however, require that a board provide a process for appeal from its decision to suspend a student. The Office of the Ombudsman also encourages school boards to develop an appeal process. Most if not all school boards, then, are likely to have a bylaw that details the process for the appeal of a suspension.

Under common law a student has a right not to be suspended unfairly and a right to have an opportunity for a hearing before the suspension takes place. Furthermore, a student has a right to full notice of the reasons for the suspension, a right to defend himself/herself, and to have a legal advocate.

3. Do students with severe disabilities have a right to be integrated into regular classrooms?

The current law in British Columbia provides that unless the educational needs of a *special_needs student* (which includes a student with severe disabilities) dictate otherwise, she/he must be integrated into classrooms with students who do not have special needs, as long as neither is affected negatively.⁵⁰ It also empowers a board to assign and reassign students to specific schools or to educational programs.⁵¹ Special classes and schools that in the past used to be run for students with severe disabilities by some school jurisdictions now currently have no legal basis in British Columbia. The current law also requires that a principal consult with a parent of a student with disabilities regarding the placement of that student.

Sometimes a principal and a parent may disagree on the educational needs and, therefore, on the placement of a student with disabilities. Conflict may arise, therefore, and there may be need for a court of law to decide whose position should prevail. The Supreme Court of Canada⁵² has ruled (October, 1996) in favour of integration, while upholding a school board's right to put a child in a special class after reasonable efforts to accommodate that student in an integrated classroom have failed. The decision is in keeping with policy in British Columbia. It is not clear if it will in any way affect practice.

4. Do students have a right to an individualized or special program?

All students are entitled to an educational program, but only *special needs students*—students with a disability or with exceptional gifts—have a right to an *individual* educational program (IEP). An IEP is a program that has been modified and adapted to suit the specific needs of a special needs student. It appears that unless students are classified as having special needs, they may have no right to an individual program. This, though, is the legal position. Personal and professional ethics may sometimes leave a teacher with no option but to give extra assistance to a student who fails to qualify technically as having special needs, but who evidently needs individualized help.

5. Do students whose native language is not English have minority language protection in British Columbia?

All students in British Columbia whose first language is not English do not have equal protection for their native language. The *Act* guarantees every child of school age in British Columbia the right to an educational program in English (section 5(1)). The *Charter* provides for English and French minority language educational rights. In brief, the *Charter* guarantees native speakers of French who live in anglophone provinces (and vice versa) a right to have their children instructed in their language when they live in a province in which their language is a minority language. Consistent with the *Charter*, the *Act* extends to French language minority students in British Columbia a right to instruction in French (section 5(2)).

This constitutional right is not extended to other language groups, and it seems that they do not have such minority language educational rights. The teaching of other minority languages (for example, Punjabi and Mandarin) occurs in schools in British Columbia largely as a result of provincial and local school board policy rather than protection of a legitimate right.

6. Do students have a right to English as a second language?

Although English as a second language (ESL) is offered by several school districts in British Columbia and is supported by the Ministry of Education, there seems to be no legislation or specific provincial policy that provides a right to ESL or guarantees its provision. The strongest legal basis for ESL seems to be the general provincial policy towards greater diversity and choice in education.⁵³

7. Do students have a right to race relations protection?

There are no provisions in the *Act* that offer race relations protection to students in British Columbia. In addition, provincial policy does not deal specifically with protection for racial groups. Furthermore, although the *Charter* offers protection against racial discrimination (section 15), it is not clear that even this provision can be said to offer race relations protection. The strongest legal provincial basis for race relations protection seems to be the general policy towards equity.⁵⁴ Equity as defined in the policy relates to the fair allocation of resources.

In the absence of legislation and clear policy that deals specifically with race relations, the Ministry of Education and local school boards have developed guidelines for helping to deal with race relations issues in schools. Curriculum writers and resource reviewers promote the concepts of race relations and anti-racism throughout the curricula. Integrated resource packages for each subject and grade level have been reviewed by ministry staff and specialist teachers to ensure that they are non-discriminatory and enhance understanding of and respect for cultural diversity.⁵⁵

8. Do teachers have the right to search students if they have good reason to believe that they are in possession of illegal substances or devices?

Although teachers have a duty under the *Act* to ensure that students comply with the rules of the school and the code of conduct of the Board, and although teachers are generally regarded by the courts as having authority to discipline students, in the absence of specific references to searches of students in the *Act*, there seem to be at least three good reasons to suggest that teachers should be cautious about searching students even if they believe that they have good reasons to do so.

First, the *School Act Regulation* (section 5(7)(g)) gives to the principal the responsibility for the general conduct of students and for exercising “paramount authority” over matters of discipline within the school. Reported cases both in Canada and the U.S.A. have dealt thus far with the consequences of searching by principals of both the person (for example, searching a pocket) and personal effects (for example, searching a locker or purse) of a student. It does not seem clear that a teacher has equal authority to search a student under the current law. Without such authority it may be illegal for a teacher to carry out such a search.

Second, the *Charter* guarantees everyone the right to be secure against unreasonable search and seizure. The courts have made a distinction between searches for disciplinary purposes and searches with the intent to prosecute, and they have established clear principles and rules that should be followed by a person with the authority to search students and their personal effects. Two primary rules have emerged as very important in carrying out a search that will not violate a student’s Constitutional rights. First, a person with the authority to search students must have reasonable grounds to believe that he/she will find evidence of an infraction of school rules. Second, the search should not be too invasive and should be reasonably related to the seriousness of the infraction and to the age and gender of the student.

Third, a student may be perceived as having a legitimate expectation of privacy of person and of personal effects. Hence, this legitimate expectation must be balanced with the school’s duty to see to it that the school is a safe environment and that rules and codes of conduct are followed. Some schools seem to deal with this conundrum by taking steps to reduce students’ expectation of privacy with respect to locker searches. They do this in some or all of the following ways:

- a) Enter into a locker rental agreement in which the student agrees that the principal or a designate may search the locker without notice at any time;

- b) Have students agree, as a condition of rental, to give to the principal the combination to the lock with the proviso that the student will be told if and when the locker is to be searched;
- c) Include in a rental agreement an understanding that the locker remains the property of the school and could be searched at any time;
- d) Outline in the School Handbook the circumstances in which the locker will be searched;
- e) Set restrictions in school policy on the contents of lockers.

9. Does a teacher have a duty to report to the police students who commit a crime?

It is a crime under the *Criminal Code*⁵⁶ (*C.C.C.*) to “assist, comfort, or receive” for the purposes of enabling an escape, someone who has committed a crime (section 23(1)). However, the *C.C.C.* does not seem to place a legal obligation on a teacher or teacher-counsellor to report to the police, for instance, a student who has admitted in a counselling session to committing a crime. Teachers who counsel students in these circumstances must take care to avoid behaviour or action that could help the student escape detection and possible arrest. It should be noted, too, that withholding information from law enforcement authorities could result in a criminal charge. Also, withholding information from school authorities when asked may infringe school board policy and attract disciplinary action.

A related question concerns whether or not a teacher should notify the authorities of a student who threatens to commit a crime. There are no *C.C.C.* provisions that require that the police are notified in such a circumstance. There are, therefore, no hard and fast legal rules. In these instances, however, professional judgment might dictate that if a teacher believes that a student has the intention to carry out a criminal or self-destructive act and the student cannot be dissuaded, it might be wise and in the student’s best interests to inform the parent/guardian, the principal, or the police, as the case requires. Factors which should affect this decision should include the following: (1) the seriousness of the threatened behaviour, (2) an assessment of the probability that the student will actually carry it out, and (3) the student’s frame of mind. The teacher should also question the reasonableness of not informing the necessary authority/authorities and also make some assessment of what other teachers would do under those circumstances. It is wise to check school and school board policy for relevant provisions about what things are to be reported to the principal and who should do the reporting to authorities outside the school.

10. If teachers have reason to believe that a student is in need of protection must they tell the principal before telling social services?

The *School Act* has no provisions relevant to this question. Under the *Child, Family and Community Service Act (1996)* (*CFCSA*) a person who has reason to believe that a child is in need of protection has a duty to report promptly to a local director (of Family and Child Services) or a person designated by the director (section 14). A report to the childcare worker within the school is not sufficient. Reporting to the local director or person designated by the director is required even if the information upon which the belief was formed is confidential or is prohibited from disclosure under other legislation (for instance, *FIPPA*). It is an offence not to

report such belief, and failure to report now carries a potential penalty of a fine of up to \$10,000 or imprisonment of up to 6 months, or both.

Some school boards may develop policy and guidelines pertaining to how such reports should be made by its employees. In the interest of maintaining the principal's administrative and supervisory authority over the school, some boards may likely require either that a principal be informed of the belief that the child is in need of protection and then make the report. Or, alternatively, the teacher may be directed to first inform the principal, who then makes the report.

The requirement in the *CFCSA* is that a teacher report directly to a local director of the Ministry for Children and Families, or a designate. Since local board policy may not supersede legislation, it seems reasonable to argue that boards that direct the principal to make the report or require that the principal be informed first of the suspicion might be putting teachers who comply with that policy in jeopardy of the law.

11. Does a student have the right to give consent for medical purposes?

In British Columbia a person less than 19 years of age has the right to give consent for “therapeutic, preventive, palliative, diagnostic, cosmetic, or other health related purpose” without reference to a parent or guardian (*Infants Act*, section 17).⁵⁷ Such services include:

- a) Birth control counselling and methods;
- b) Weight control and fitness regimes;
- c) Cosmetic surgery, e.g. breast augmentation;
- d) Sexually transmittable disease testing, counselling, and treatment;
- e) Alcohol and drug counselling and treatment; and
- f) Mental health counselling and treatment.

The healthcare provider must determine that the service is in the best interest of the young person, and must explain the nature and consequences of the service and the benefits and risks.

This provision applies to *healthcare providers*, which is defined broadly to include a person who is licensed, certified, or registered in a profession recognized by statute to offer the services listed above. It also includes other practitioners who may offer some of the same services although they are not licensed, registered, or certified in a profession.

Most teacher-counsellors are registered teachers, though they may not be registered in the Province under legislation, as are psychologists. It seems that when they offer students “therapeutic, preventive, diagnostic, or health related services,” they may qualify as *healthcare providers*, and the *Infants Act* would apply to them. In short, if a teacher-counsellor has determined that the counselling or treatment about to be offered is legal and is in the student's best interest, and if the nature and consequences of the service have been explained to the student, and the teacher-counsellor understands that the student does not want a parent to be informed, there seems to be no legal barrier to the provision of such service. The student alone may consent for the procedures listed above.

12. Does a parent have a right to information given in confidence to a teacher-counsellor by a student?

The current policy in British Columbia regards the parent as the primary client of education, and accordingly gives a parent right of access to information about a student. Specifically, the *Act* currently gives parents general entitlements to information about a student's attendance, behaviour, and progress (section 7(1)(a)). It also entitles a student and his/her parents to examine *all student records* kept by a board pertaining to that student. Furthermore, a parent and the student may receive a copy of the student's record, if so desired (section 9). Students and parents possess these rights either together or individually. Thus, at the present time a parent seems to be able to gain access, without the student's consent, to information given in confidence and contained in a student's record. These provisions give rise to at least three sets of questions. One set has to do with what is a student record. Another relates more generally to the protection of privacy for students. The other deals with the handling of confidential information.

The *Act* defines a "student record" as "a record of information in written or electronic form pertaining to a student . . . but does not include a record prepared by a person *if that person is the only person with access to the record*"⁵⁸ (emphasis added). Stereotypically, student records are understood to include all academic records and such prescribed documents as *report cards*, *PR cards*, and *confidential files*. On the face of it, the *Act* expressly states that a student record (to which a student and her/his parents are entitled to examine and receive a copy) excludes notes made by a teacher-counsellor for personal use only. However, there is a conflict between the narrow definition of "record" in the *Act* and a broader definition of the same term under the *Freedom of Information and Protection of Privacy Act (FIPPA)*. The latter includes *all* notes, whether or not they were intended for personal and private use.

The *FIPPA* provides that if there is a conflict between its own provisions and those of another piece of legislation (in this case the *Act*), the *FIPPA* provisions predominate unless the other piece of legislation expressly states that its own provisions will prevail despite the *FIPPA*. The *Act* does not expressly contain such a provision with respect to parental right of access to a student's record. This suggests that, despite the wording of the current *School Act*, parents may not have easy access to a teacher-counsellor's written notes without permission of the student.

Current provisions (*FIPPA* and the *Act*) also give rise to questions about a student's privacy. The record of information to which parents may have access under the *Act* is personal information to which only the student has right of access under the *FIPPA*. Parental right of access without the student's consent seems to run contrary to the general direction of the *FIPPA*, which generally prohibits the disclosure of information to a third party unless there is consent in writing. One then might anticipate a problem for a teacher-counsellor in those instances in which there is on record information given in confidence by a student who expressly requests that his/her parents not have access to the information.

With respect to the confidentiality of records, teacher-counsellors need to note the revisions to the *Legal and Ethical Guidelines* of the British Columbia School Counsellors Association.⁵⁹ While they still stress the confidentiality of information received from students, they now clarify the situations under which this information needs to be shared. These new

guidelines permit the breaking of confidentiality under five circumstances. These circumstances are as follows:

- a) CONSENT: With the consent of the student, the teacher-counsellor may divulge information received through the counselling relationship.
- b) POTENTIAL HARM: If behaviour of the student threatens potential harm to him/herself or another person, the teacher-counsellor shall take appropriate action to protect the student and/or other person.
- c) CHILD PROTECTION: A teacher-counsellor who has reason to believe that a child is or might be in need of protection shall forthwith report the information to the appropriate authorities in accordance with legal obligations pursuant to child protection legislation.
- d) CONSULTATION AND COLLABORATION: A teacher-counsellor may consult and collaborate with other professionals for purposes of more effectively helping the student. The teacher-counsellor shall share only such information that will serve the best interests of the student.
- e) LEGAL REQUIREMENTS: A teacher-counsellor may be required to provide records in compliance with the law.⁶⁰

The *Act* and the *FIPPA* also impose on a counsellor and other school officials a duty to keep information about a student confidential. The Supreme Court of Canada (1996) has limited disclosure of a counsellor's notes to only those portions relating to the incident in question.⁶¹ It seems that teacher-counsellors should inform the students they counsel that they may have to disclose information given to them in confidence.

Since parents and students are rightly viewed by government as the clients of the education system, there is a need for them to have access to information upon which to make educational choices. It seems likely that the *School Act* will be amended to allow the parents to continue to have legal access to information that might otherwise be considered unreasonable disclosure and invasion of personal privacy. For a fuller discussion of this matter see Martin and Uhlemann (1995).⁶²

13. Do teachers have any discretion in the choice of textbooks?

The answer to this question seems to be both yes and no. Yes, if the book is to be used for instruction in the delivery of the Provincial curriculum, and if it is recommended by the Minister or approved by the board in charge of the school. Conversely, no, if it is to be used to teach the Provincial curriculum, and it is neither recommended by the Minister nor approved by the board.

By contrast, if the book is to be used in a teaching area that falls outside the Provincial Curriculum but within the local curriculum adopted by the Board then the book would have to be approved for use in the school by the Board alone.

The *Act* gives the Minister of Education powers to determine the educational program or curriculum. This includes the power to make orders about resource materials. In keeping with this power the Minister of Education publishes from time to time the *Catalogue of Learning*

Resources, Primary to Graduation, which contains materials recommended for use in public schools.

A board, which has the legal responsibility at the school level for providing an educational program, may ordinarily only use resource materials from two sources in its provision of the program: namely, the *Catalogue* published by the Ministry and a list evaluated and approved by the Board.

A teacher who wishes to “select a set of books” must first consider the following questions:

1. Will this book replace material that has been authorized for use in my grade level? If it will, its use may be questionable.
 2. Is the book on the recommended list found in the *Catalogue*? If yes, then there seems to be no problem with its use as long as it is not expressly prohibited by school board policy. If no, then:
 3. Has the book been approved by the board for use? If yes, then there seems to be no problem with its use. If no, then:
 4. Does the board have evaluation and selection criteria and procedures for the approval of books for use in the classroom? If yes, then the teacher would have to seek board approval for use. If no, then the teacher may choose to encourage the board to establish these criteria and procedures.
14. A colleague of mine was suspended by the board for hitting a student but was acquitted by the court on a charge of assault for the same incident. How can this be?

When a teacher hits a student in British Columbia two different laws may come into play. First, the *Act* provides that discipline of a student should not include corporal punishment.⁶³ Therefore a teacher who hits a student contravenes this provision and may be guilty of an offence under the *Act*. Consequently, such a teacher is likely to be disciplined by the board and perhaps, depending on the facts and the circumstances, by the College of Teachers and by the BCTF under the *Code of Ethics*.

Second, hitting a student may also bring a charge of assault under the *Criminal Code*.⁶⁴ Assault occurs when a person applies force intentionally on another without the other’s direct or indirect consent (section 244(1)). A teacher, then, may be charged not only under the *Act* with an offence, but also under the *Criminal Code* with a crime. The latter is punishable by fine or imprisonment, or both.

The *Criminal Code* also provides for the exemption of teachers who use reasonable force to correct a student. In one such case in British Columbia, the court agreed that the teacher had reasonable grounds to believe that a student was undermining his authority and that the slap on the head was reasonable force in the circumstances as a means of correction. The teacher was absolved of the criminal charge of assault by the courts under section 43 of the *Criminal Code* but was, nevertheless, punished under the *Act* for using force as a means of disciplining a

student. There have been calls from several quarters for the repeal of section 43 as it represents a double standard in our laws (see Chapters 3 and 4).

15. Do students have a right to wear whatever they feel like to classes?

The answer to this question is very likely yes. Traditionally, it would very likely have been no, but the proclamation of the *Charter* in 1982 has made a major change. The *Charter* gives to all Canadians the fundamental freedom of expression, which includes expression in the clothes one chooses to wear. It does not mean that every kind of dress is acceptable. What seems clear from court decisions in the U.S.A. is that a student's dress would have to be shown to be unsafe, unhealthy, or to create disorder and indiscipline in the school before it could legally infringe that right. Clothes that are merely considered in poor taste may not legally be prohibited.

16. May school rules be enforced outside school property?

School rules may be enforced off school premises only during activities organized and sponsored by the school (*School Act Regulation* section 5(7)(g)). Outside of these instances, there does not seem to be a legal basis for enforcing school rules for misbehaviour that occurs, for example, in a shopping mall in the evening after school or on the weekend. It used to be the case that students were subject to the school's code of conduct "while travelling to and from school" (*School Act Regulation*, 1979, section 36). This is no longer the case and should be noted by all school personnel.

17. How are school officials held accountable?

School officials, including the Minister of Education, principals, and teachers, are all subject to the rule of law. That is, like all citizens, they must abide by the laws of the Province and of Canada, and furthermore, they can be held accountable for the manner in which they exercise their duties and responsibilities. This means that they are accountable to those who supervise their work as well as to those agencies that are given control over them. For example, in the organizational setting: the Minister is answerable to the Premier; a school board is answerable to the Minister; a principal is answerable to the Superintendent and the board; and a teacher is answerable to the principal, the Superintendent, and the board. The courts are the final arbiter when disputes arise.

However, school officials are also answerable to officials and other persons external to their organizations, and it has been argued that this accountability has increased in over time.⁶⁵ School boards and the Minister are answerable to the electorate for the decisions they make. In addition, the Ombudsman may hear complaints against decisions of school and school district officials. (This includes some decisions made by teachers.) They may also be accountable to the Privacy Commissioner, under the *FIPPA*, for decisions related to the privacy of students and their parents. As professionals they may also be answerable to the British Columbia College of Teachers (principals and superintendents must be members of the College) and the British Columbia Counsellors' Association (if members). They must also comply with the British Columbia Teachers Federation *Code of Ethics*.

Conclusion

Teachers need to carry out their profession in a manner that is both professionally sound and legally defensible. This requires that they develop a knowledge of the law and of how it relates to their professional practice. Despite the fact that the law sometimes is not clear and sometimes fails to provide comprehensive guidance, knowledge of it constitutes the best possible preparation for coping with areas of uncertainty and conflicts.

Resources

- British Columbia Teachers Federation. *Code of Ethics, Members' Guide to the BCTF*. (2003).
Web site: www.bctf.ca/About/MembersGuide/CodeofEthics.html.
- Constitution Act, 1867* (UK) 30 & 31 Vict., c. 3. (Formerly the *BNA Act*).
- Charter of Right and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B of the *Canada Act, 1982* (U.K.), 1982, c. 11.
- Child, Family and Community Service Act*, R.S.B.C. [1996], c. 46.
- Criminal Code*, R.S.C. [1985], c. C-46.
- Infants Act*, R.S.B.C. [1996], c. 223 as amended by *Miscellaneous Statutes Amendment Act*, c. 77, 1992, s. 2.
- Labour Relations Code*, R.S.B.C. [1996], c. 244.
- Martin, Y. M., & Uhlemann, M. R. (January, 1995). "Ethical and Legal Issues in the Administration of Education," *BC Counsellor* 5.
- Ombudsman Act*, R.S.B.C. [1996], c. 340.
- Province of British Columbia, Ministry of Education, Special Education Branch. (1995). *Special Education Services: A Manual of Policies, Procedures and Guidelines*. Victoria, BC: Crown Publications.
- Public Education Labour Relations Act*, R.S.B.C. [1996], c. 382.
- School Act*, R.S.B.C. [1996] c. 412.
- Teaching Profession Act*, R.S.B.C. [1996] c. 449.
- Youth Criminal Justice Act* S.C. [2002], c.1

Endnotes

Chapter 14

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- ¹. Teachers in independent schools in British Columbia are not governed by the *School Act*. Their rights, duties, and responsibilities are determined by their contract of employment. Nevertheless, common law, that is the legal principles developed by the courts, would likely apply in cases dealing with independent schoolteachers. While the standards set in the *School Act* may be a good guide to them, there is no obligation that they be followed.
 - ². *School Act*, R.S.B.C. [1996] c. 412.
 - ³. While a student is entitled to enroll in a public school, and education between the ages of 5 to 16 years of age is compulsory, there is no expressed duty on the part of a parent to enroll a child. By contrast, parents who chose to home-school are duty bound to register the child and failure to do so is an offence under the *Act*. *School Act*, ss. 2, 4, 5.
 - ⁴. *Supra* note 2, s. 4.
 - ⁵. *Supra* note 2, s. 5(1).
 - ⁶. *Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, being Schedule B of the *Canada Act*, 1982 (U.K.), 1982, c. 11, s. 23.
 - ⁷. *Supra* note 2, s. 6.
 - ⁸. “Refusal to offer an educational” program is the language which replaces former notions of “exclusion,” or more commonly understood, “expulsion.” The current language is consistent with a student’s entitlement to “enroll in an educational program.”
 - ⁹. *School Act*, s. 7(1)(a) and *School Regulation* (B.C. Reg. 265/89), s. 4(2)(3).
 - ¹⁰. *Supra* note 2, s. 7(1)(b).
 - ¹¹. *Ibid.*, ss. 8.1–8.8.
 - ¹². Special Needs Students Order Ministerial Order M397/95, as am by M32/04, s. 2(1).
 - ¹³. *Supra* note 2, s. 7.1.
 - ¹⁴. Ministry of Education, *Special Education Services: A Manual of Policies, Procedures and Guidelines* (Victoria, BC: Special Education Branch, Crown Publications, 1995) as revised in 2002. Web site: http://www.bced.gov.bc.ca/specialed/ppandg/iep_2.htm, B9.
 - ¹⁵. *Ibid.*, C4.
 - ¹⁶. *Ibid.*, A9.
 - ¹⁷. *Supra* note 2, s. 7(2).
 - ¹⁸. *Offence Act*, R.S.B.C. [1996], c. 338.
 - ¹⁹. Statement of Policy Order (Mandate for the School System) OIC 1280/89. Policy statements are not usually enforceable until they assume the form of a legislative instrument. This policy statement, unlike most statements of policy, was introduced as an Order-in-Council that is considered subordinate legislation and, hence, enforceable. This raises the question of the substantive difference, implied or intended, between an *entitlement*, as used in the *Act*, and a *right*, as used in the Policy Order. Neither is defined in the *Act* or in the *Interpretation Act* of B.C. The *Interpretation Act* of Canada, however, includes an Order-in-Council within the scope of an enactment. To date, there appears to have been no judicial clarification of the implications of this Order-in-Council for parents.
 - ²⁰. *Ibid.*, s. 9.
 - ²¹. *Ibid.*, s. 11.
 - ²². *Labour Relations Code*, R.S.B.C. [1996], c. 244.
 - ²³. *School Regulation* (B.C. Reg. 265/89), s. 4.
 - ²⁴. *Child, Family and Community Service Act*, R.S.B.C. [1996] c. 46, s. 14.
 - ²⁵. *Ibid.*, s. 13.
 - ²⁶. *Teaching Profession Act*, R.S.B.C. [1996] c. 449.
 - ²⁷. *Code of Ethics, Members’ Guide to the BCTF* (1995).

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28. In the case of an independent school, a report from the school authority, *Independent School Act*, S.B.C. c. 51, [1989], s. 6.1.
29. *Supra* note 26.
30. *Supra* note 24, c. 46.
31. *Supra* note 23, s. 5.
32. *Supra* note 23, s. 5(6)(g).
33. *Supra* note 23, s. 5(6)(f).
34. *Supra* note 23, s. 5(6)(g).
35. *Supra* note 23, s. 5(6)(i).
36. *Supra* note 23, s. 5(6)(c).
37. *Supra* note 2, s. 26.
38. *Supra* note 2, s. 182.
39. *Members' Guide to the BCTF*, 1993–94, 9.B01, 40.
40. *Supra* note 2, R.S.B.C. [1996] c. 412, s. 1.
41. This includes, a) the general nature of the educational program, b) the general requirements for graduation from an educational program, c) the process for the assessment of its effectiveness, and d) educational resource materials *School Act*, R.S.B.C. [1996] c. 412, s. 168.
42. Special Needs Students Order, M397/95, as am. by M32/04.
43. *T. Larry Jones v. Regina* (1986), 2 S.C.R. 284.
44. *Freedom of Information and Protection of Privacy Act*, R.S.B.C. [1996], c. 165, s. 4.
45. Although in the *Act* it is a board which has statutory responsibility for the schooling and is the head of a school within its jurisdiction, it seems likely that a board may choose to designate a principal as head of a school for the purposes of giving access to records kept in his/her school at the time when access to them is sought under the *FIPPA*.
46. *Youth Criminal Justice Act* S.C. [2002], c. 1.
47. *Ibid.*, s. 125(6).
48. *Supra* note 2, s. 26.
49. An educational program is defined as a set of learning activities that in the opinion of the board is designed to enable the learner to develop individual potential. *Supra* note 2, s. 1.
50. Ministerial Order 150/89 as amended by M397/95, as amended by M32/04.
51. *Supra* note 2, s. 75(4).
52. *Eaton v. Brant County Board of Education* (1997) 1 S.C.R. 241.
53. Statement of Policy Order (Mandate for the School System), OIC 1280/89.
54. *Ibid.*
55. Thanks to Shirley Avril of the Social Equity Branch, Ministry of Education, Training and Skills, British Columbia Government, for discussing this section.
56. *Criminal Code*, R.S.C. [1985], c. C-46.
57. *Infants Act*, R.S.B.C. [1996], c. 223, s. 2.
58. *Supra* note 2, s. 1.
59. *Legal and Ethical Guidelines* (1995), British Columbia School Counsellors Association, p. 5 on-line at www.bctf.bc.ca/psas/BCSCA/Legal%20&%20Ethical.
60. *Ibid.*
61. *R. v. O'Connor* (1995) 4 S.C.R. 411.
62. Y. M. Martin and M. R. Uhlemann, "Legal and Ethical Issues in the Management of Counselling" (January, 1995) *B.C. Counsellor* 5.
63. *Supra* note 2, s. 76(3).
64. *Supra* note 56, s. 43.
65. See Y. M. Martin, "Controls on Administrative Discretion in Decision-making: 1872-1994" (1995) *Education and Law Journal* 232.