

Topic:	Age of Consent for Professional Student Services Personnel (PSSP)
Effective:	January 2009
Cross-Reference:	<i>Health Care Consent Act, 1996</i> <i>Personal Health Information Protection Act, 2004</i> <i>Education Act</i> and its Regulations including 181/98 (Identification and Placement of Exceptional Pupils) and R.R.O. 1990, Reg. 298 (Operation of Schools – General) <i>Regulated Health Professions Act, 1991</i> and specific health professional College legislation and guidelines for professional codes of conduct and standards of practice <i>Municipal Freedom of Information and Protection of Privacy Act, RSO</i> <i>**Psychology and Applied Behaviour Analysis Act, 2021</i> (pending proclamation) Ministry of Education of Ontario documents: Special Education in Ontario Policy and Resource Guide (especially on Professional Assessments) Policy/Program Memorandum 59 on Psychological testing and assessment of pupils
Review Date:	May 2023
Revision Date:	May 2027
Responsibility:	Superintendent of Education Student Education Services and Superintendent Student Well-Being and Mental Health

INTENDED PURPOSE:

The Halton District School Board (“HDSB”) employs Professional Services Staff, some of whom provide health services to HDSB students. Professional Services staff include regulated professionals (Social Workers, Occupational Therapist, Psychologists/Psychological Associates and Speech-Language Pathologists), soon-to-be-regulated professionals (Behaviour Analysts) and unregulated professionals (Child and Youth Counsellors and Specialized Behaviour Support Workers). Psychologists, Speech-Language Pathologists and soon, Behaviour Analysts, will be/are regulated under the Ministry of Health; Social Workers are regulated under the Ministry of Children, Community and Social Services.

This procedure addresses the age of consent and the consent process for all Professional Services staff, where applicable, and aligns with the *Health Care Consent Act, 1996* and the *Personal Health Information Protection Act, 2004*. The *Personal Health Information Protection Act, 2004* is consistent with the *Health Care Consent Act, 1996*, in that capable young people may make their own health care decisions and may keep their personal health information private. As PSSP staff work at a school board, the **Education Act*, the *Municipal Freedom of Information Protection of Privacy Act* and Ministry Standards also create obligations to obtain parent consent for service in some cases*.

The *Health Care Consent Act* does not prescribe a particular age at which a person becomes capable of consenting to service. As a general rule, young people are seen to develop such capacity at around the age of 12. Students may make their own decisions if they are “capable” to do so; capacity is determined by the **regulated professional** involved who will presume that a child or youth has the capability to consent, unless there are reasonable grounds to believe otherwise. Students may be capable of making some information and service decisions and not others*. If students are not capable, they will have a substitute decision-maker who will consent on their behalf as set out in law.

PROCEDURES:

1. Referral Procedure for Professional Services

Referrals are presented at a School Resource Team meeting for information, discussion and problem-solving. Social Workers, Behaviour Analysts, Speech-Language Pathologists, Occupational Therapist(s), Child and Youth Counsellors and Psycho-educational Consultants will provide referral forms where appropriate and needed. Exceptions to this process are listed below.

1.2 Exceptions:

The School Administrator may request the intervention of a Social Worker, Psycho-educational Consultant or Child and Youth Counsellor in situations that require prompt interventions for safety reasons (e.g., suicide screening, or Violence Risk Threat Assessment VTRA) or as part of a response to a tragic event (e.g. as part of the Tragic Events Response Team).

Social Workers and Psycho-educational Consultants (Mental Health) will accept self referrals from capable students. Capacity of the student to consent for service is determined by Social Workers and Psycho-educational Consultants (Mental Health).

The departments of Student Well-Being and Special Education Services will share information with students and parents/guardians about professional services available in the school setting. This information will include a statement about consent.

2. Age of Consent and Consent Process for Social Work Services

Consent to Social Work services for psychotherapy is governed under the Health Care Consent Act.

The practice of psychotherapy is the assessment and **treatment** of cognitive, emotional or behavioural disturbances by psychotherapeutic means, delivered through a **therapeutic relationship** based primarily on verbal or non-verbal communication. [*Psychotherapy Act 2007*, SO 2007, c.10, Sched R. s.3]

Social Work Referrals from Administrators and school staff must go through School Resource Team (SRT) in elementary schools and School Team (ST) in secondary schools unless there is an exception as per 1.2 above.

Students who are age 11 and under must have the written or verbal consent of a parent/guardian to obtain School Social Work service, unless the support is related to attendance concerns.

Students who are age 12 and up can consent to the services of a School Social Worker, where the Social Worker is satisfied the student is capable as per the Health Care Consent Act. A Social Worker is entitled to presume that a child or young person has the capacity to consent to service, and to the collection, use and disclosure of their personal health information for the purpose of providing health care, unless there are reasonable grounds to believe otherwise.

In the event of a conflict between a student who is capable, and their parent/guardian, the Board must be governed by the wishes of the capable student. In other words where a capable student has expressly denied consent for the Social Worker to be involved or to disclose any information to the student's parent/guardian, teachers, or other third parties, the student's instruction will be respected.

A School Social Worker documents informed consent obtained by student/parent/guardian acknowledging that service is voluntary, risks, benefits and limitations of the support are fully understood. This informed consent is documented separately from the Ontario School Record as per Ontario College of Social Workers and Social Service Workers (OCSWSSW) and the Halton District School Social Worker documentation and filing procedures.

Regardless of a student's age, a School Social Worker will actively encourage the involvement of parent(s)/guardian(s) and others who are in the student's circle of support. Exceptions to this:

- 2.1.1. In situations when a student is living independently of parent/guardian;
- 2.1.2. If it is in the best interest of the student to receive support autonomously

2.2 A School Social Worker will maintain documentation as per OCSWSSW guidelines, and will keep all documentation in a file that is separate from the Ontario Student Record according to current Halton District School Board Social Work documentation and filing procedures.

2.3 The School Administrator may request the intervention of a School Social Worker in situations that require prompt interventions for safety reasons (e.g., suicide screening or Violence Threat Risk Assessment) or as part of a response to a tragic event (e.g. as part of the Tragic Events Response Team).

Exceptions:

2.4 Attendance Inquiries and Prolonged Absence Referrals are mandated under the Education Act and do not require consent of the parent/guardian or student as Attendance Counsellors have statutory authority to perform their duties without consent to help students return to school on a more regular basis. School Social Workers are not acting in a clinical social work role when fulfilling their responsibilities as Attendance Counsellors. Further, Attendance Counsellors have statutory authority under the *Education Act* to collect, use and disclose personal information related to attendance. *MFIPPA* does not require consent to collect, use or disclose personal information for the purpose of attendance counselling functions.

Attendance Counsellors will maintain documentation on all attendance cases. Documentation will be kept in an Attendance File. Part of the attendance record includes the The Attendance Inquiry Report for Habitual Non- Attendance and the Prolonged Absence Report (s). Copies of these reports when used and updated will be put in students' Ontario Student Record.

If the Social Worker ceases to act in the enforcement role of an Attendance Counsellor, and a student requests social work services, a Social Worker must then immediately obtain informed consent for services prior to providing school social work services.

3. Age of Consent for a Psychological Assessment and Psychological Service

Psychology Referrals from Administrators and school staff must go through School Resource Team (SRT).

For a student under the age of 18, a parent/guardian must consent to intellectual or personality testing (psychological assessment) under the age of 18, under the Education Act. The Ministry of Education's Policy/Program Memorandum 59 applies to psychological testing and assessment of pupils. *It requires that parents/guardians be informed and consent to the assessments (unless the student is 18 or older).

Consent for other psychological services is otherwise governed by the *Health Care Consent Act*.

The School Administrator may request the intervention of a Psycho-educational Consultant in situations that require prompt interventions for safety reasons (e.g., suicide Screening or Violent Risk Threat Assessment) or as part of a response to a tragic event (e.g., as part of the Tragic Events Response Team).

4. Age of Consent for Speech and Language Pathology (SLP) Services

Speech and Language Referrals from Administrators and school staff must go through School Resource Team (SRT).

Consent to Speech and Language Services is governed under the Health Care Consent Act. Speech and Language Referrals from Administrators and school staff must go through a System Resource Team (SRT) meeting.

Students under the age of 12 must have written or verbal consent of a parent/guardian to obtain SLP Services.

For students who are aged 12 or 13 written or verbal consent of a parent/guardian to obtain SLP Services **should** be obtained. Additionally, the student **must** also provide verbal or written consent to the services of a School SLP, where the SLP is satisfied the student is capable as per the *Health Care Consent Act* and the service is appropriate to the student's needs. In the event of a conflict between a student who is capable, and their parent/ guardian, the board must be governed by the wishes of the capable student. In other words where a capable student has expressly denied consent for the SLP to be involved or to disclose any information to the student's parent/guardian, teachers, or other third parties, the student's direction must be respected.

For students who are aged 14 and older, written or verbal consent of the student must be obtained in order for the student to access Speech-Language Pathology services, unless the Speech-Language Pathologist is not satisfied that the student is capable as per the *Health Care Consent Act*. In such cases, the written or verbal consent from the student's parent/guardian must be obtained.

Regardless of a student's age, a School Speech-Language Pathologist will actively encourage the involvement of parent(s)/guardian(s) and others who are in the student's circle of support, except in situations where a student is living independently of parent/guardian.

A School Speech-Language Pathologist will maintain documentation as per the College of Speech-Language Pathologists and Audiologists of Ontario (CASLPO) guidelines, and will keep all documentation in a file that is separate from the Ontario Student Record according to current Halton District School Board Speech and Language services documentation and filing procedures.

5. Consent for Behaviour Analyst/Analysis (BA) Services:

Behaviour Analyst Referrals from Administrators and school staff must go through School Resource Team (SRT).

Once regulated, the consent to Behaviour Analyst Services will be governed under the Health Care Consent Act. Behaviour Analyst Referrals from Administrators and school staff must go through a School Resource Team (SRT) meeting.

Students under the age of 12 must have written or verbal consent of a parent/guardian to obtain BA Services.

For students who are aged 12 or 13, written or verbal consent of a parent/guardian to obtain BA Services **should** be obtained. Additionally, the student **must** also provide verbal or written consent to the services of a School BA, where the BA is satisfied the student is capable as per the *Health Care Consent Act* and the service is appropriate to the student's needs. In the event of a conflict between a student who is capable, and their parent/ guardian, the board must be governed by the wishes of the capable student. In other words where a capable student has expressly denied consent for the

BA to be involved or to disclose any information to the student's parent/guardian, teachers, or other third parties, the student's direction must be respected.

For students who are aged 14 and older, written or verbal consent of the student must be obtained in order for the student to access BA services, unless the school BA is not satisfied that the student is capable as per the *Health Care Consent Act*. In such cases, the written or verbal consent from the student's parent/guardian must be obtained.

Regardless of a student's age, a School Behaviour Analyst will actively encourage the involvement of parent(s)/guardian(s) and others who are in the student's circle of support, except in situations where a student is living independently of parent/guardian.

Once regulated, a School Behaviour Analyst will maintain documentation as per the College of Psychologists and Behaviour Analysts of Ontario guidelines. They will keep all documentation in a file that is separate from the Ontario Student Record according to current Halton District School Board Behaviour Analyst services documentation and filing procedures.

6. Consent for Occupational Therapy (OT) Services:

Occupational Therapist Referrals from Administrators and school staff must go through School Resource Team (SRT).

Consent to Occupational Therapy Services is governed under the Health Care Consent Act.

Students under the age of 12 must have written or verbal consent of a parent/guardian to obtain OT Services.

For students who are aged 12 or 13, written or verbal consent of a parent/guardian to obtain OT Services **should** be obtained. Additionally, the student **must** also provide verbal or written consent to the services of a School OT, where the OT is satisfied the student is capable as per the *Health Care Consent Act* and the service is appropriate to the student's needs. In the event of a conflict between a student who is capable, and their parent/ guardian, the board must be governed by the wishes of the capable student. In other words, where a capable student has expressly denied consent for the OT to be involved or to disclose any information to the student's parent/guardian, teachers, or other third parties, the student's direction must be respected.

For students who are aged 14 and older, written or verbal consent of the student must be obtained in order for the student to access Occupational Therapy services, unless the Occupational Therapist is not satisfied that the student is capable as per the *Health Care Consent Act*.

In such cases, the written or verbal consent from the student's parent/guardian must be obtained.

Regardless of a student's age, an Occupational Therapist will actively encourage the involvement of parent(s)/guardian(s) and others who are in the student's circle of support, except in situations where a student is living independently of parent/guardian.

The Occupational Therapist will maintain documentation as per the College of Occupational Therapists of Ontario (COTO) guidelines, and will keep all documentation

in a file that is separate from the Ontario Student Record according to current Halton District School Board Occupational Therapy services documentation and filing procedures.

7. Age of Consent and Consent Process for Child Youth Counsellors (CYCs)

When administrators or school staff are making CYC referrals, these referrals must go through SRT unless this is a request for a classwide service which does not require parental consent nor School Resource Team (SRT).

Presentations and group work within a classroom by Child and Youth Counsellors do not require notice or consent of parents/guardians or consent of each participating student where there is a teacher (OCT) present. However, for the purposes of home-school communication a notification letter is sent to parents/guardians by the school administrator when a presentation/classwide service is being delivered. This is the same for programs/sites that have a CYC assigned as direct support (e.g. Gary Alan and Behaviour Resource Classes).

The School Administrator may request the intervention of a Child and Youth Counsellor in situations that require prompt interventions for safety reasons (e.g., suicide screening), participating in a Violent Threat Risk Assessment (VTRA) as per fair notice, or as part of a first day response to a tragic event or needs arising related to equity, Indigenous and human rights (e.g. as part of the Tragic Events Response Team or IEHR).

Child and Youth Counsellors are not regulated health professionals nor are they governed by a self-regulatory college, hence the *Regulated Health Professions Act, 1991* does not apply. HDSB Child and Youth Counselors are not considered health information custodians, nor do they provide the controlled act of psychotherapy.

The Ministry of Education states that when services provided by staff other than a teacher (OCT, member of the College of Teachers) there is an expectation that consent is received by the student's parent/guardian if the student is under the age of 18 and in their parent's/guardian's care (Education Act, RSO 1990). This statement is relevant to CYCs as they are unregulated practitioners.

Manager of Professional Services (CYCs) have a defined role in terms of consultation and management of CYC work. Managers do not assign nor supervise work that is considered to be a controlled act.

CYCs document informed consent obtained by parent/guardian acknowledging that risks, benefits, limitations and voluntary nature of the support are fully understood. This is documented separately from the Ontario School Record as per the HDSB CYC guidelines/standards of practice.

CYC's are not governed by PHIPA, but are governed by MFIPPA. They are in a similar position to an EA or a teacher, who also have access to personal health information,

and may receive this information from a parent/guardian. CYC's can receive personal health information from regulated professionals whom have assessed capacity and obtained consent to share personal health information from the student to the CYC.

A student who is 16 or older may consent to the use of their personal information.