

LEADERSHIP UPDATE

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This Issue of *Leadership Update* provides some refresher material on anonymous complaints, FOIP and grad parties. As well, see page 5 for information on this year's Educational Leadership Academy.

Anonymous Complaints to School Officials

The Problem

Principals may be approached by students, parents or other teachers with a concern about a particular teacher, accompanied by a request to keep the complainant's name anonymous, with the explanation that the complainant "is afraid of repercussions on the student" or "doesn't really want to make a big thing of this and hurt the teacher." In reality, in many cases opinions expressed about others reflect misunderstandings or only partial understanding of the circumstances or the complete truth.

It is not possible to validate a complaint without hearing both sides of the issue. Fairness demands that the concern be put into context and considered for accuracy and completeness.

Legalities

For colleagues: The Code of Professional Conduct requires that criticism of a colleague be done in confidence only **after** the colleague has been informed of the criticism. Also when a teacher makes a report on the performance of another teacher, he or she must provide a copy of the report to the other teacher before submitting it to the authorities. (Clauses 13 and 14, subject to Section 24 of the *Teaching Profession Act*.)

For all: The *Freedom of Information and Protection of Privacy Act* (FOIP) grants everyone the right to request access to records under the custody or control of a public body, including school boards. The right of access,

however, is not absolute. Under FOIP, public bodies have two types of justification for refusing to grant access to their records:

1. **Mandatory exemptions to access.**

FOIP sections 16 and 17 outline those instances where a public body **must not** grant access to records including instances where granting access would prove harmful to a third party's business interests or to an individual's personal privacy.

2. **Discretionary exemptions to access.**

FOIP sections 18 to 29 outline several instances where a public body **may** exercise discretion in determining whether or not to provide access to a requested set of records.

What does this mean for teachers seeking access to records containing anonymous complaints?

- a) Teachers have the right to request any records held by school boards, including those containing teachers' personal information.
- b) Teachers should be aware that school boards may respond by invoking an exemption to disclosure. In some instances, school boards **must not** release the information (mandatory exemptions); in other instances, school boards **may exercise discretion** in determining if it will release the requested records (discretionary exemptions).
- c) Teachers should be aware that if school boards can sever protected information

Continued on page 2

**A child's
life is like
a piece of
paper on
which every
person
leaves a
mark.**

Chinese Proverb



Anonymous Complaints to School Officials

Continued from page 1

- from a record, they are required to provide teachers with the remainder of the record (Section 6[2]).
- d) Teachers should be aware that school boards have a duty to assist all applicants (Section 10).
- e) School boards may charge reasonable and specific fees for record searches, photocopying and other services related to providing access to records (Section 93).
- f) Teachers have the right to request that the Office of the Information and Privacy Commissioner review any aspect of a school board's response, application of exemptions or estimate of fees (Section 53).

Other sections of the FOIP Act of interest to teachers:

- 1(1)** In this Act
- (n) "personal information" means recorded information about an identifiable individual, including
- (viii) anyone else's opinions about the individual, and ...
- (q) "record" means a record of information in any form ...
- 2** The purposes of this Act are ...
- (c) to allow individuals, subject to limited and specific exceptions as set out in this Act, a right of access to personal information about themselves that is held by a public body.
- 6(1)** An applicant has the right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.
- 12(1)** In a response under section 11, the applicant must be told

- (c) if access to the record or to part of it is refused, ...
- (i) the reasons for the refusal and the provision of this Act on which the refusal is based, ...
- 35** If an individual's personal information will be used by a public body to make a decision that directly affects the individual, the public body must
- (a) make every reasonable effort to ensure that the information is accurate and complete, and ...

The full text of the FOIP Act is available from the Queen's Printer website (www.qp.gov.ab.ca).

How School Administrators Should Handle Complaints

People have the right to express their concerns about others to proper authorities. The authorities have the responsibility to ensure complaints are not handled in a malicious or hurtful manner. A complaint brought to school officials, including principals, other site-based administrators or counsellors, cannot be withheld from the person complained about. If a request is made or any use is to be made of the information, it must be provided to the person complained about except in those specific circumstances where an exception is allowed by FOIP. **Persons bringing complaints should be denied anonymity.** And, before using the information, every reasonable effort must be made to determine its accuracy.

- Q** If the complainant is unwilling to be identified, what do I do?
- A** Anonymity cannot be promised unless no record is made and the

information is not passed on in any form to anyone, including your superiors. Passing it to a superior would be a lack of integrity and violates the Code of Professional Conduct.

- Q** When am I obligated to reveal a complaint and the identity of a complainant to the person complained about?
- A** You are obligated when the person makes a written request (FOIP Section 7[2]) or when you use the information.
- Q** What am I compelled to produce?
- A** Any letters or documents given to you that contain opinions about a person are personal information to which the person has the right of access. Similarly, copies of any record you make of information provided to you (including your personal notes) must be provided to any person about whom they contain personal information unless you are able to correctly apply and defend any of the mandatory or discretionary exemptions available to the school board under FOIP (Sections 16–29).
- Q** What if my notes (or a document) contain personal information about more than one person?
- A** If you are able to sever information that identifies other persons from the record, you are required to do so and provide the remainder of the record to the applicant (FOIP Section 6[2]). You cannot provide third-party personal information to a person without the consent of the third party (FOIP Section 17[2a]). Information provided must be limited in scope to the applicant's original written request.
- Q** How broadly does this apply?
- A** FOIP applies to any and all records in the custody or control of the school and the school board regardless of the records' source or format (FOIP Section 2).

The best policy is openness and careful, limited note taking.

Nothing here should be construed as definitive legal advice.

Call the Association about your specific situation *before* taking action.

Anonymous Questionnaires

Anonymous questionnaires have been used extensively in assessing schools, programs and satisfaction with the educational progress of students. Such questionnaires are notoriously unreliable and unethical when members comment on the professional performance or reputation of a colleague.

The use of anonymous comments from students, parents and school employees in a manner that reduces school performance to a public relations exercise rather than a fair and effective evaluation by objective criteria and standards is abhorrent. Whether presented as general surveys, evaluation documents or direct questions posed in writing or by interview, anonymity permits inaccurate comments to be made with impunity.

The Code of Professional Conduct requires members to address concerns about a colleague with that colleague before seeking other avenues of complaint. It is enforceable among teachers, but viewing it as a weapon is inappropriate. The code is a guideline for living, a courtesy or etiquette that is applicable in professional and

nonprofessional ways and a suitable standard for interpersonal dealings of all people. The respect accorded to colleagues is the same respect teachers would like to see accorded to them by nonmembers and a respect that is appropriately extended to nonmembers.

The Association offers the following advice:

1. Questionnaires that ask teachers to comment on the professional performance or professional reputation of a colleague may not be submitted anonymously. A copy of a report must be provided in advance to the teacher. Reports may be submitted only in good faith and only to proper officials.
2. A teacher who completes anonymous questionnaires about the competence, reputation or performance of a teacher or who directs other teachers to complete such questionnaires may be charged with unprofessional conduct and required to appear before a hearing of a Professional Conduct Panel. Conviction on a charge of unprofessional conduct could lead to a reprimand, a severe reprimand, a fine, a combination of a reprimand and a fine, or, in severe cases, suspension or expulsion from membership in the Association.
3. No person can relieve teachers of their professional responsibilities under the code. One teacher cannot permit other teachers to submit anonymous questionnaires about that person because the responsibility to act with integrity is an individual legal, moral and professional responsibility imposed and enforceable by law.
4. No person can be required to complete a questionnaire that causes a violation of the code. A teacher may leave blank the entire

questionnaire or only those questions to which responding would mean violating the code.

5. The teacher presented with a questionnaire for submission to a proper authority may choose to respond, sign the questionnaire and present it to the teacher whose competence, professional performance or professional reputation is being judged. The person being judged may, after a reasonable time, forward the questionnaire and attachments, including a personal response, if desired, to the appropriate authority.

Rationale

The Alberta Teachers' Association endorses fair and ethical evaluation of schools, programs and individuals. Anonymous comments are neither fair nor ethical. Teachers must consider the following:

- Professional conduct—particularly the Code of Professional Conduct, clauses 13, 14 and 18: All active members must comply with this enforceable code. Anonymous comments could be found unprofessional for reasons that extend beyond the code.
- The *School Act*: Boards are required to act reasonably. Thus, there is a duty of fairness toward their employees.
- The *Canadian Charter of Rights and Freedoms* recognizes that there are acceptable limitations to the fundamental right of free speech.
- The rules of natural justice apply at all times. These rules require that both sides of an issue be heard without bias.
- Under the *Freedom of Information and Protection of Privacy Act*, opinions about another individual are considered that individual's

personal information. (FOIP Section 1[n][viii]) This information can be used only for a purpose consistent with the purpose for which the information was collected (FOIP Section 39[a]) and only in a manner consistent with the act.

- Association policy and practice obligates natural justice and revealing of the source of concerns. Teachers have consistently placed the obligation on themselves to refrain from anonymous comments and encourage a similar ethical standard for others.

Evaluators are not restricted from asking questions of members about colleagues. Procedures used must be consistent with the considerations above. They must be consistent with the code, the charter and conventional principles of fairness. Association members are expected to comply with the standards provided below when dealing with other members.

Disgruntled Parents

Surveys consistently show high parental satisfaction (more than 90 per cent) with schools. When concerns arise, they are usually dealt with fairly and openly in an atmosphere of trust and cooperation. However, on occasion some parents or community members have not acted reasonably, and their actions have created serious threats to individual teachers.

Anonymous Complaints

FOIP Section 33(c) limits a public body's authority to collect personal information about an individual to that which "...relates directly to and is necessary for an operating program or activity of the public body." Section 34 outlines the acceptable sources of personal information. And Section 35 requires that the public body make every reasonable effort to ensure that personal information used to make a decision about an individual is accurate. Section 39 requires that the public body only use information for the purposes established under Section 33. In other words, anonymous complaints are impossible to properly administer under *FOIP*.

In effect, anonymity in registering concerns is unacceptable and the opportunity to provide information related to the concerns must be provided in almost all circumstances. People who complain anonymously are not generally seeking to help. No model of conflict resolution supports blind complaints.

Evaluation

Teacher evaluation remains a responsibility of principals (*School Act*, s 20) subject to provincial and school board policies and regulations. Parents who wish to enter classrooms to observe teachers and make their own evaluations are inappropriately usurping an authority for which they are neither qualified nor authorized. It should not be permitted.

In addition, *FOIP* section 38 requires that public bodies protect personal information (such as student records, works, photographs and other records found in classrooms) "by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or destruction."

Dealing with Concerns

1. Distinguish between legitimate concerns and invalid concerns.
2. Refuse to act on an anonymous complaint.
3. Direct concerns first to the person complained about.
4. Schedule meetings where required.
5. Set an agenda.
6. Maintain professional discussion.
7. Develop an action plan listing all obligations.
8. Address concerns on an individual basis and on specific actions.
9. Separate parental concerns from evaluation.
10. Recognize the point at which issues have been dealt with and are complete.

Possible Legal Responses to Harassment

1. Cease letter.
2. Section 27 directive.
3. Peace Bond.
4. Criminal Code charges.
5. Defamation action.

Graduation Parties

Around this time of year questions arise about school staff and teacher involvement in planning graduation exercises and parties. Association advice follows.

Teachers, even those who are parents of graduating students, should restrict their involvement in graduation ceremonies to the school-based activities. This includes the presentation ceremonies (whether they take place in the school or not) and a school-sponsored dance or other celebration activity that is adequately chaperoned, school sanctioned and protected by district insurance policies.

In planning school-sponsored activities, teachers should not become involved in planning Safe Grad parties, bush parties with organized safe drivers, home parties or any other activity that

may expose them to legal, financial or professional liability if something should go wrong. Involvement of school staff in the planning, even allowing the planning to take place on school property, may expose the staff member, the principal and the district to a lawsuit in the event of an incident. It is best to say no to involvement at an early stage. Participation of teachers in these events presents too great a risk.

Even if a teacher believes that he or she is acting as a parent, other parents will still look upon that person as a teacher and will hold that person to a professional standard of behaviour. Teachers are expected to display a high level of conduct, especially in any situation that may involve the safety of children. One must not, for example, become involved in any activity that could involve the illegal consumption of alcohol.

If you have questions or concerns about this advice, please call a Member

Services staff officer at the Association offices in Edmonton at (780) 447-9400 or 1-800-232-7208 (toll free from elsewhere in Alberta), or in Calgary at (403) 265-2672 or 1-800-332-1280.

NOTE

Substitute teachers who have taught for one day (or even a partial day) since September 1 are active members of the Alberta Teachers' Association for the school year and, therefore, should recognize the implications of this advice.

Educational Leadership Academy

presents Dr Todd Whitaker

“What Great Administrators Do Differently”

This year's Educational Leadership Academy (ELA) will be held at the Banff Centre from July 6 to 10, inclusive. ELA is an exceptional, five-day, in-residence program for principals, assistant principals and others in educational leadership positions, as well as individuals who are aspiring to leadership positions.

Dr Todd Whitaker is the feature speaker of ELA 08. He is an internationally recognized speaker on a variety of educational topics, including teacher leadership, instructional improvement, change and leadership effectiveness. Dr Whitaker's work has been published in the areas of teacher leadership, instructional improvement, change, leadership effectiveness, technology and middle-level practices.

The brochure and registration form are available on the ATA website under Resources for School-Based Administrators—Educational Leadership Academy. If you have any questions or need further information, please contact the ELA director, Konni deGoeij, at (780) 447-9400 or Leslie Kaun at (780) 447-9410 (Edmonton and area) or 1-800-232-7208 (elsewhere in Alberta); e-mail leslie.kaun@ata.ab.ca.