

POLICE / SCHOOL BOARD PROTOCOL

for

THE INVESTIGATION OF SCHOOL-RELATED OCCURRENCES



Upper Grand District School Board

Wellington Catholic District School Board

Conseil scolaire Viamonde

Conseil scolaire catholique MonAvenir

Guelph Police Service

Ontario Provincial Police – Dufferin Detachment

Ontario Provincial Police – Wellington Detachment

August 2020

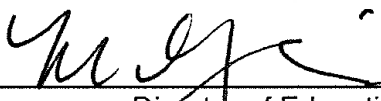
Police and School Boards Protocol Agreement

The purpose of this document is to establish a protocol between the following partners: Guelph/~~Orangeville/Shelburne~~ Police Services; the Ontario Provincial Police; Upper Grand District School Board, Wellington Catholic District School Board, Conseil scolaire Viamonde and Conseil scolaire catholique MonAvenir. This will confirm the working relationship and appropriate responses to occurrences requiring police investigation or response to schools and boards. This protocol is designed to encourage, enable and maintain a positive relationship between police officers, school administrators, staff, students, parent/legal guardians, members of the school community, and establishes guidelines for these various relationships.

We the undersigned, support the principles and protocol set out in the document titled Police/School Board Protocol for the Investigation of School-Related Occurrences (August 2020).



 Chief
 Guelph Police Service



 Director of Education
 Wellington Catholic District School Board


~~Chief~~
~~Orangeville Police Service~~

Martha Rogans

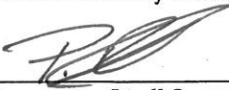
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Dated at Guelph, Ontario the 10th of May, 2021



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Background

At the direction of the Ministry of Education and the Ministry of Community Safety and Correctional Services Ontario (now part of the Ministry of the Solicitor General), school boards and police services must establish and follow a protocol for the investigation of school-related occurrences.

This protocol:

- assists in the greater protection and safety of students, teachers, other board staff, administrators, volunteers and members of the school community
- encourages constructive, ongoing, adaptive and responsible partnerships between police and the school community
- facilitates appropriate sharing and disclosure of information in accordance with privacy laws
- promotes joint consultation and partnerships between school boards and police services on maintaining a safe school environment
- ensures that the obligations and requirements of both the education and police systems are met
- ensures an equitable and consistent approach across the jurisdiction to the way in which schools and police respond to school-related incidents
- outlines certain obligations and procedures that are required by provincial and federal legislation, case law and individual board policies and procedures



The legislation includes, but is not limited to:

- [Education Act](#)
- [Child, Youth and Family Services Act](#)
- [Criminal Code](#)
- [Youth Criminal Justice Act \(YCJA\)](#)
- [Canadian Charter of Rights and Freedoms](#)
- [Ontario Human Rights Code](#)
- [Police Services Act \(PSA\)](#)
- [Provincial Offences Act](#) (specifically Part VI, “Young Persons”)
- [Municipal Freedom of Information and Protection of Privacy Act \(MFIPPA\)](#)
- [Freedom of Information and Protection of Privacy Act \(FIPPA\)](#)
- [Personal Health Information Protection Act 2004 \(PHIPA\)](#)
- [Occupational Health & Safety Act \(OHSA\)](#)
- [Fire Protection and Prevention Act \(FPPA\)](#)
- [Victims’ Bill of Rights](#)



1. Signatories to the Protocol

This document establishes a protocol between the Upper Grand District School Board, Conseil scolaire Viamonde, Conseil scolaire catholique MonAvenir, Guelph, Orangeville, and Shelburne Police Services, Ontario Provincial Police (Wellington and Dufferin County), and the Wellington Catholic District School Board.

Notes: In this document, Children’s Aid Society (CAS) means:

- Family and Children’s Services of Guelph and Wellington County (FACS)
- Dufferin Child and Family Services (DCAFS)

Principal means: principal, vice-principal or designate.

2. Statement of Principles

The principles are based on the need to:

- have a clear understanding of police and school board responsibilities
- promote respect and civility in the school environment
- respect the fundamental rights of students, teachers, and staff pertaining to age, ancestry, colour, race, citizenship, ethnic origin, place of origin, creed, disability, family status, marital status, gender identity, gender expression, socio-economic status, employment, housing, sex, and sexual orientation, and other prohibited grounds of discrimination under the Ontario Human Rights Code
- support both rights and responsibilities

3. Introduction

The rationale for this protocol includes:

- assisting in the greater safety and protection of students, teachers, principals, staff and volunteers in schools



- encouraging constructive ongoing, adaptive and responsive partnerships between police and the school community in areas such as violence prevention
- reinforcing the importance of a coordinated and multifaceted approach on the part of schools and police in their interactions with parents/legal guardians and the community, in an effort to promote the well-being of students
- facilitating appropriate sharing and disclosure of information in accordance with privacy laws, including FIPPA and MFIPPA
- promoting joint consultation and partnerships between school boards and police services on maintaining a safe school environment
- ensuring that the obligations and requirements of both the education and police systems are met
- ensuring an equitable and consistent approach across a school board's jurisdiction in the way police and schools respond to a school-related occurrence

4. Role and Mandate of Police Services

In exigent circumstances police will assume primary responsibility as may be necessary to ensure school safety.

The role of local police services related to young people and the school community is:

- engaging and working proactively in partnership with school officials to ensure the effectiveness of this protocol
- protecting public safety and preventing crime
- enforcing the *Criminal Code*, the *Youth Criminal Justice Act (YCJA)*, and other federal, provincial, and municipal legislation and related regulations
- upholding the duties legislated under section 42 of the *Police Services Act*
- assisting victims of crime
- conducting police and criminal investigations



- assisting in the development of young people's understanding of good citizenship
- promoting and fostering the prevention and reduction of crime, both against and committed by young people
- providing information on community safety issues
- diverting young people away from crime and antisocial behaviour
- working in partnership with other government and community-based organizations to support positive youth development

5. Role and Mandate of School Boards

In exigent circumstances the police will assume primary responsibility as may be necessary to ensure school safety.

The principal's role is consistent with their duty pursuant to the *Education Act*, to give attention to the health and well-being of students, and to maintain proper order and discipline in the school.

The role of the school boards, principals, teachers and school staff related to safe and secure schools is to:

- clearly explain the board's Code of Conduct to the school community, and the potential reach of school discipline with respect to behaviours taking place outside of school that have a negative impact on school climate
- engage and work proactively and collaboratively with police officials to ensure the effectiveness of this protocol
- comply with the requirements related to the duties of principals and teachers under the *Education Act* and regulations
- consider the roles and responsibilities of the principal in conducting investigations of incidents for which suspension or expulsion under the *Education Act* are possible, including the responsibility to take mitigating and other factors into account, as set out in Ontario Regulation 472/07
- comply with the requirements legislated under the *Child, Youth and Family Services Act* (e.g., "duty to report")



- respect the board’s Code of Conduct, as required by the *Education Act* (section 302)
- ensure that resources (e.g., on drug awareness, bullying prevention) are accessible to assist school staff in promoting a positive school environment with students and parents/legal guardians
- develop policies on how to respond to crises, including the development of a communications plan
- ensure that appropriate prevention and intervention strategies are available
- provide all staff, including occasional, part-time or itinerant teachers, with opportunities to acquire the skills necessary to promote safe, equitable, and inclusive school environments and implement the provisions of this protocol that may apply to them, including the ability to lock their classroom doors during a lockdown

6. A Coordinated Approach to Violence Prevention

Schools and police services will work in partnership to promote positive student behaviour and prevent school violence. Local police services and the school community will work together to develop, promote, maintain and implement violence prevention programs and policies in schools that address:

- the risk factors associated with antisocial, gang-related or criminal behaviour
- appropriate action when dealing with violent behaviour
- explaining procedures for police investigations
- working with community agencies to administer crime prevention programs that focus on peer mediation, conflict resolution, and referrals to appropriate community resources (counseling or mentoring services, drug awareness and education, or support for those seeking employment or housing, and Crime Stoppers)
- “Crime Prevention through Social Development” (CPSD) which involves addressing risk factors associated with crime and victimization



Strategies that schools can use include:

- helping students develop social skills, including conflict resolution skills
- proactively identifying students at risk and giving them extra support
- using progressive discipline to teach and encourage appropriate behaviour in school
- viewing each student as an integral and contributing member of the school community
- demonstrating, by example and leadership, that students' human rights are to be respected
- encouraging students to return to the school community after involvement with the criminal justice system and supporting them in the process

Strategies that police can use include:

- developing positive partnerships with all members of the school community, including parents/legal guardians
- being visible within the school community
- being a positive role model for students
- establishing positive relationships with children and youth
- making referrals based on the best interest of the students
- helping deliver educational sessions on crime and criminal justice issues
- being part of an integrated, multi-agency team that can respond to children and youth at risk of conflict with the law
- facilitating communication and cooperation with school offices, Youth Justice Probation Services and other police officers, courts and other social service services
- supporting students as they return to the school community after involvement with the criminal justice system



- using proactive measures that focus on the factors that precipitate the onset of criminal and antisocial behaviour
- offering support in a consulting role, to assist school personnel in determining appropriate action when dealing with violent behaviour and to explain the procedures for police investigations

Police services and schools will refer to, and align with, related ministry, school board and police policies on violence prevention.

This protocol is one component of a broader partnership between schools and other essential community partners including mental health providers, health care professionals and children’s aid societies all dedicated to violence prevention in Ontario schools.

7. Occurrences Requiring Police Response

Mandatory Notification of Police

At a minimum, the police must be notified of the following types of incidents as soon as it is safe to do so. For considerations regarding students under the age of 12, refer to section 15 (Occurrences Involving Children Under Age 12).

The incidents listed include those that happen at school, during school-related activities in or outside school, or in other circumstances if the incident has a negative impact on school climate.

- all deaths
- hate and/or bias-motivated occurrences
- physical assault causing bodily harm requiring treatment by a medical practitioner
- sexual assault
- robbery
- criminal harassment
- relationship-based violence
- possessing a weapon, including possessing a firearm



- using a weapon to cause or to threaten bodily harm to another person
- bomb threats
- trafficking in weapons or in illegal / prescription drugs
- possessing an illegal drug or, unless the student is a medical cannabis user, cannabis
- gang-related occurrences
- extortion
- non-consensual sharing of intimate images
- commodification of sexual activity

Discretionary Notification of Police

Principals should consider mitigating and other factors when deciding to call police in these discretionary situations. It is expected that all other occurrences not specified will be dealt with by the principal on a case-by-case basis and that police will be called at the principal's discretion.

Principals should also consider students with special education needs where police response is neither necessary, nor appropriate.

Police response may also be needed in connection with the following types of incidents:

- giving alcohol or cannabis to minors
- being under the influence of alcohol, illegal drugs or, unless the student is a medical cannabis user, cannabis
- bullying, including cyber-bullying
- threats of serious physical injury, including threats of this serious nature made on social networking sites or through instant messaging, text messaging, e-mail, etc.
- physical assault not requiring treatment by a medical practitioner
- incidents of vandalism



- trespassing incidents

8. Information Sharing and Disclosure

A number of different statutes deal with information sharing and disclosure. These include federal legislation (the *Criminal Code* and the *Youth Criminal Justice Act*) and provincial legislation including the *Municipal Freedom of Information and Protection of Privacy Act*, the *Child, Youth and Family Services Act* and the *Education Act*.

In situations where federal and provincial laws are in conflict with each other, the federal law takes precedence.

a) *Criminal Code*

The police can access a student's Ontario Student Record (OSR) by warrant or subpoena or with the written consent of a parent/legal guardian or the student if the student is 18 years of age or older. In exigent circumstances, the police can access a student's OSR without a warrant, under section 487.11 of the *Criminal Code*.

b) *Youth Criminal Justice Act (YCJA)*

The YCJA sets out the procedural requirements for dealing with young persons charged with offences (see Part 6, subsections 110 to 129 of the YCJA, *Publication, Records and Information*).

There may be occasions where it is necessary for police to share confidential information with school officials. Section 119 of the YCJA provides the circumstances under which confidential information may be shared.

The following (from Part 6) are of particular relevance:

- subsection 110(1): no person shall publish the name of a young person, or any other information that would identify the young person as a young person dealt with under the YCJA
- subsection 111(1): no person shall publish the name of a child or young person, or any other information related to a child or a young person, if it would identify the child or young person as having been a victim of, or as having appeared as a witness in connection with, an



offence committed or alleged to have been committed by a young person

- subsection 118(1): Except as authorized, no person shall be given access to a record kept under sections 114 to 116, and no information contained in it may be given to any person where to do so would identify the young person to whom it relates as a young person dealt with under the YCJA
- subsection 125(1): a peace officer may disclose to any person any information in a record kept under section 114 (court records) or section 115 (police records) that is necessary to disclose in the conduct of the investigation of an offence
- subsection 125(6): the provincial director, a youth worker, the Attorney General, a peace officer, or any other person engaged in the provision of services to young persons may disclose to any professional or other person engaged in the supervision or care of a young person – including a representative of any school board or school or any other educational or training institution - any information contained in a record kept under sections 114 to 116 if the disclosure is necessary:
 - to ensure compliance by the young person with an authorization under section 91 or an order of the youth justice court
 - to ensure the safety of staff, students or other persons; or
 - to facilitate the rehabilitation of the young person

c) *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*

This legislation regulates the collection and disclosure of personal information that is not related to the YCJA. The Act expressly permits a school board to disclose records of personal information to the police to aid in an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result.

Accordingly, since principals and teachers are permitted to share information in such circumstances, in non-urgent situations police should be prepared to



provide a written statement that the identified information is required by the police.

Further information regarding the release of students' personal information can be found on the website for the Information and Privacy Commissioner of Ontario (www.ipc.on.ca/education) in [*A Guide to Ontario Legislation Covering the Release of Students' Personal Information*](#).

d) Child, Youth and Family Services Act

Section 125 of the Act states that the public, including professionals who work with children, must promptly report any suspicions that a child is or may be in need of protection to a Children's Aid Society (society). The Act defines the phrase "child in need of protection" and explains what must be reported to a society. It includes physical, sexual and emotional abuse, neglect, and risk of harm.

The duty to report applies as well to information that is confidential or privileged (except under solicitor/client privilege), and there is no liability against a person who reports unless the reporting was done maliciously or without reasonable grounds.

For more information, see "[Reporting Child Abuse and Neglect: It's Your Duty](#)" in Appendix E.

9. School Procedures for Reporting to Police

In incidents that involve students, whether as victims or as alleged perpetrators, the safety of students and staff is the first priority. After assuring personal safety the principal must be contacted immediately.

If there is an emergency, the principal or designate will call 911 immediately and provide the necessary information to police communication centre personnel, and implement the school's emergency response/crisis response plan. If the situation is not an emergency, the principal should contact the general police inquiry phone number.

Information and support required by police will be determined and provided by school staff on the arrival of police.



Reporting procedures must comply with the “duty to report” provisions under the *Child, Youth and Family Services Act*.

10. Initial Police Contact

A police officer responding to a report of a school-related incident is responsible for obtaining and thoroughly documenting information about the incident subject to police service policies and procedures.

Except in exigent circumstances, or if the principal is being investigated, police are to follow the procedures below:

- notify the principal or school office of their presence providing proper identification
- explain the purpose of the visit and plan with the principal on how to proceed
- consider alternatives to limit the disruption to the school day
- obtain information from the principal about the student (e.g., accommodation needs/barriers to communication) before making contact with the student
- contact, or make arrangements with the principal to contact, the parents/legal guardians of students under the age of 18, as indicated in Notification of Parents/Legal Guardians (section 12(a) below)

When the principal is being investigated, police will notify the appropriate school board supervisory officer.

11. School and Police Investigation of Incidents

See Appendices C - Notification Flow Chart, and D - Parallel Investigations Flow Chart

If police and the school are both investigating the same incident at the same time, procedures for police and principals with respect to legal rights, search and seizure, detainment and arrests, and support for victims must be followed as noted below.



While it is important that the principal not do anything to prejudice the police investigation, it is also important that the police recognize and respect the principal's obligations under the *Education Act*. For example, under the Act, a school board's decision regarding expulsion of a student must be made within 20 school days from the date when the student was suspended. Police need to be aware of this fact and should, when possible, share with the principal information that may be relevant to that decision. Cooperation, whenever possible, is necessary regarding joint investigations.

Police investigations should be undertaken in accordance with the local police services' criminal investigation management plan, and where required, with the *Ontario Major Case Management Manual*.

The principal will inform police of any logistical information about the school, such as the hours of the school day or the class rotation schedule, which may be relevant to the investigation process. Police will endeavour to work within these considerations in order to minimize the disruption to the school. Unless other options have been exhausted, police services should not use the school as a place of convenience in which to interview or arrest students for matters that do not pertain to the school.

a) Legal Rights

When investigating school-related incidents where a young person is a suspect, attention should be given by the principal and police to the procedures that are consistent with the following provisions:

- parental notification upon arrest (section 26, YCJA)
- right to counsel (section 25, YCJA)
- right not to make a statement (section 146, YCJA)
- protection of privacy (section 110, YCJA)

b) Search and Seizure

Where investigations involve search and seizure, the police and principal must pay particular attention to the following procedures and responsibilities:



- personal and premises searches must be in accordance with the Ministry Policing Standards Guideline LE-011 on search of premises and LE-012 on search of persons, and relevant federal legislation
- Police must notify the principal before conducting searches on school premises. Under some exigent circumstances, police may execute a search without a warrant and without notice to the principal.
- the principal maintains the continuing responsibility for students even when police are on school premises
- roles and responsibilities of police and school personnel in conducting searches of persons or property. The search and seizure protocols of the *Criminal Code* and *Provincial Statutes* must be followed.

In addition, it is the responsibility of the principal to advise students at the beginning of the school year that desks and lockers are school property and there is no expectation of privacy; therefore, a search of such property and person is permissible by the school administration, under the *Education Act*.

School administrators have the right to search bags, lockers and clothing if they believe that there has been a breach of school regulations or discipline and that the search of a student would reveal evidence of that breach.

The principal is acting as an agent of the board and not as an agent of the police. It is advisable that the student or another person be present when the locker or desk is being opened.

A principal has the duty to carry out an investigation to establish the nature and extent of the offence, but when it becomes apparent that an offence has been committed, the police shall be notified.

c) Detention and Arrest

Police have legal grounds to demand entry for weapon and drug searches and to arrest a person for an indictable offence, or to save lives.

Police procedures to be followed in detainment or arrest and discharging specific obligations, such as the notification of parents/legal guardians, shall be in accordance with the *Youth Criminal Justice Act* and the Ministry Policing Standards Guideline LE-005 on arrest.



The *Criminal Code* has provisions for detainment for the purpose of investigations.

When it is necessary that a student be arrested at school during school hours, to the extent possible, such an arrest will be made in such a manner that will minimize disruption to the school.

When a young person is arrested or detained, the discharging of specific obligations including the notification of parents/legal guardians is governed by the *Youth Criminal Justice Act* (section 26).

d) *Support for Victims*

The following are procedures and responsibilities with respect to providing support for victims:

- procedures must be consistent with the Ministry Policing Standards Guideline VA-001 on victim's assistance
- it is the responsibility of police officers to remain at the scene until satisfied that there is no imminent threat to the victim and that issues related to the victim's safety have been addressed
- it is the responsibility of the principal to inform the parents/legal guardians of victims who have been harmed as a result of an activity for which suspension or expulsion must be considered, unless, in the principal's opinion, notification would put the victim at risk of harm from the parents/legal guardians
- it is the responsibility of all board employees who work directly with students to support all students, including those who disclose or report such incidents, by providing them with contact information about professional supports (public health, community agencies, Help Phone lines, etc.)
- school staff and police will provide assistance to victims and their families through board resources, police resources, social service agencies and other community support systems as available including legal services, as well as access to information and confidentiality of victim and witness identity under the *Youth Criminal Justice Act*.



e) **Police Access to Video Surveillance**

When police wish to access video surveillance footage from a school (recorded or real-time) for the purpose of an investigation, a formal request must be made. Procedures followed must be consistent with the school board's policy on video surveillance. In all instances, a record of who and when any video footage has been viewed must be maintained.

12. **Police Interviews of Students**

Note: The Notification Flow Chart in Appendix C provides a summary of the steps detailed below.

It is the responsibility of police to conduct interviews related to criminal investigations of incidents that involve students as alleged perpetrators, victims, or witnesses.

If the police wish to question a student on school property, the police officers shall contact the principal of the school that the student is attending to advise the school administration of the nature of the visit and to request a meeting with the student.

- The principal must make best efforts to contact the student's parents/legal guardians as soon as possible before an interview and document such attempts.
 - Parents/legal guardians should **not** be contacted if the police determine that doing so may endanger the safety of the student or another person, or compromise the integrity of an investigation.
 - If the parents/legal guardians refuse to grant permission for the student to be interviewed by the police, the school administrator will request that the police conduct their interview off school property. The responsibility for parent/guardian notification resides with the police if the interview is to take place off school property.
 - The local CAS must be involved in a joint interview if the child is suspected to be in need of protection.



- If the student is a Crown ward or ward of the local CAS, the legal guardian is considered to be the CAS.
- Police need to act in a manner that respects the dignity of the student and minimizes disruption to the school when it is necessary to interview, search, or arrest a student at school during school hours.
 - the most appropriate time and place for a student interview must be considered
 - school personnel will assist police in making the required preparations including securing a quiet, private room to ensure confidentiality, and establishing a time for the interview
- If the student is not in attendance at school on the day the police arrive, the school shall inform the police officer of the student's proper date of birth, address, phone number, and the parent's/legal guardian's home and business phone numbers, in accordance with section 32(g) of the *Municipal Freedom of Information and Protection of Privacy Act*, which is the authority for providing such personal information to law enforcement officials to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result.

If the student who is being questioned at school is **under 18 years of age**, the principal must make best efforts to contact the student's parents/legal guardians as soon as possible before the interview (see section 12(a) Notification of Parents/Legal Guardians below) and advise the student of this contact. Prior to the questioning, the parents/legal guardians shall be advised that their child is to be interviewed as a witness, as a victim, or as a suspect. If the parents/legal guardians refuse to grant permission for the student to be interviewed by the police, the school administrator will request that the police conduct their interview off school property.

- A parent/guardian, third-party adult, or the principal, if no alternative is available, must be present when a student under the age of 18 is being interviewed at school.
 - If the parents/legal guardians of the student under 18 years of age do not wish to attend the school, or the school is unable to contact the parents/legal guardians within a reasonable amount of time dependent upon the circumstances, the



principal or vice-principal should be present during any interview of the student held at the school provided the student agrees to their attendance.

- In circumstances where a student aged 12 to 17 expresses their right not to have the principal or vice-principal present, the school administrator will request the police to conduct their interview off school property. The principal and vice-principal, and the police will document the details of that decision. The rights of the student must be protected in these interviews.

If the student who is being questioned is **18 years of age or older**, and therefore considered an adult, the parents/legal guardians shall only be contacted with the permission of the student.

- When the parents/guardians do not attend the school for the police interview, the principal or vice-principal should be present, provided the student agrees to their attendance.

In some circumstances, a student may not have the capacity to waive their right to have an adult present. This includes students who are known to have special education needs.

a) Notification of Parents/Legal Guardians

Except in exigent circumstances, it is the principal's responsibility to contact the parents/legal guardians of:

- victims who have been harmed as a result of an activity for which a suspension or expulsion must be considered, unless in the principal's opinion notification of the parents/legal guardians would put the student at risk of being harmed by the parents/legal guardians. In this case parents/legal guardians must not be notified (*Education Act*, section 300. 3(3))
- students receiving a suspension (*Education Act*, section 311)
- all other students being interviewed by police during an investigation except:



- if the principal is directed by police because of exigent circumstances where police believe the parents/legal guardians may be implicated
- if the student is 18 years of age or older (unless the student consents to or requests or is incapable of providing consent)
- if the student is 16 or 17 years of age and has withdrawn from parent/legal guardian control, unless the student consents to or requests such contact, or is incapable of providing consent

If the local CAS is involved, school and police officials should discuss and come to agreement with the CAS regarding the timing and procedures for notifying the parents/legal guardians.

If a student is detained or arrested, the police will notify the parents/legal guardians unless the student is 18 years of age or older. The parents/legal guardians should not be contacted if the police determine that doing so may endanger the safety of the student or another person or compromise the integrity of an investigation. In such cases, the student will be advised that they may contact another adult person.

b) Preparation for Interviews

Procedures and considerations related to preparing for interviews include the following:

- if the interview should be conducted at the student's home or another location rather than at school in view of the stigma or potential impact on the student
- the need for specialized resources if the student has mental health needs
- the need for specialized resources if the student has special education needs (see section 14 below)
- the methodology of the interview
- determining which officer will lead the interview if more than one officer is involved



- arranging for audio or video recording of interview and statements, and the need for police to inform the interviewee that the conversation is being recorded
- determining the need for an interpreter (e.g. language, deaf and hard of hearing) or for information to be provided in an alternative format (e.g. braille for students who are blind or have low vision)

c) **Conduct of Interviews**

Procedures and considerations related to conducting interviews include the following:

- police must employ appropriate techniques for interviewing children and young persons, and follow the Guide to Officers for Section 146 *Youth Criminal Justice Act* Statements (appendix B)
- police will provide, upon arrest or detention, a legal caution and notification of the right to counsel where there are legal grounds to believe that the student has been involved in the commission of a criminal offence
- legal considerations of the admissibility of statements made to persons in authority (section 146(2) of the *Youth Criminal Justice Act*)
- involving the Children’s Aid Society in the interview process which is recommended when an interview involves a child who may be in need of protection
- the requirement that an adult should be present throughout the interview, except when a student can waive, and has waived, the right to have an adult present. Best efforts must be made to have the student’s parents/legal guardians, or another adult of the student’s choice, present. In circumstances when this cannot be done, the principal must attend the interview.

13. Reporting of Children Suspected to Be in Need of Protection

Every citizen in the community shares a responsibility for children’s well-being. School officials, all board employees, and police share in this collective responsibility for creating safe and nurturing environments for children. Under the *Child, Youth and Family Services Act* (CYFSA), this responsibility includes



the legal requirement to report to the local Children’s Aid Society any suspected child abuse or neglect.

Under the CYFSA, a child is defined as a person under the age of 18 years. If someone has reasonable grounds to suspect that a child **under 16** is, or may be, in need of protection, they **must** make a report directly to a society. A report may be made regarding 16- and 17-year-olds if there are concerns that they are, or may be, in need of protection.

The grounds for reporting any suspected child abuse or neglect, as defined in section 125 of the CYFSA, are outlined in Appendix E. School board policy and procedures for reporting should also be adhered to.

Anyone is encouraged to consult with Family & Children’s Services of Guelph and Wellington County at 519-824-2410 or Dufferin Child and Family Services at 519-941-1530 regarding questions about their obligations to report suspicions of protection issues.

14. Investigations Involving Students with Special Needs

School administrators have a duty to ensure that all members of the school community are able to work and learn in a safe and positive environment and have a duty to report incidents to police (see section 7, Occurrences Requiring Police Response). However, when investigations involve a student known to have special education needs, additional considerations must be taken into account by principals and police.

This includes students who are known to have special education needs, and may be identified as having an exceptionality in any of the following categories:

- behaviour (e.g. ADHD, Autism, ODD)
- communication
- intellectual
- physical (e.g. brain Injury, FASD)
- multiple

Considerations include:



- the school administrator or delegate has a responsibility to communicate to police that a student is known to have special education needs or communication difficulties
- the requirement to accommodate the student, especially when interviewing is necessary. Every attempt should be made to provide specialized support and resources for the student during an investigation.
- the need to ensure that the student's parent/legal guardian is contacted as soon as possible, except in exigent circumstances or when the police believe the parent/legal guardian may be implicated in the incident

The principal should review the student's Individual Education Plan (IEP) and other relevant student records in order to identify whether further intervention strategies and/or resources are required for the student. These may include the development of and/or revisions to a behaviour management or a safety plan.

15. Occurrences Involving Children Under Age 12

Where children under the age of 12 are involved, school boards are expected to use their discretion in applying the rules for reporting incidents to the police (see section 7, Occurrences Requiring Police Response).

Children under the age of 12 cannot be charged with an offense under the *Criminal Justice Act* or the *Provincial Offenses Act*, but police may take reports of incidents allegedly committed by students in this age group, and may respond in an appropriate manner. Early interventions for children involved in such incidents is essential, and involving police and parents/legal guardians as early as possible may facilitate the provision of appropriate intervention and support.

The principal is required to conduct an investigation of an incident for the purpose of school discipline, such as where a recommendation for suspension or expulsion may be required, regardless of the age of the students involved.

The procedures and considerations for responding to occurrences involving students under the age of 12 include:

- the requirement to notify the child's parent/legal guardian as soon as possible, except in exigent circumstances or where the police believe the parent/legal guardian may be implicated in the incident



- the authority of the police to take reports, make referrals to additional services (such as health/counselling) and to conduct interviews
- consideration of the circumstances where there is a duty to report children suspected to be in need of protection to the local CAS (under the *Child, Youth and Family Services Act*) such as when there is evidence of abuse or neglect, or the risk thereof; or when the child has committed serious acts and the child's parents/legal guardians are not accessing appropriate treatment
- the requirement to provide accommodations and/or modifications for students with special education needs as outlined in the child's IEP

16. Communications Strategy

School boards will communicate with students and their families to promote knowledge and understanding of this protocol and consistency in its application.

Boards will communicate the range of situations in which police may be called to investigate school-related occurrences, including any criminal activity that occurs off school property and out of school hours if it has a negative impact on the school climate. Communication materials will be written in plain language and available in multiple languages and accessible formats, as appropriate, and in accordance to each school board's respective policies and procedures.

The police and school board will work cooperatively in the development and release of information to the community.

17. Protocol Review Process

Police services and boards will review this protocol every two years, or sooner as required, with input from school staff, parents/legal guardians, and students, as appropriate.

The review is conducted by the police services and school boards, which should develop an effective mechanism for soliciting input from local police governance, school staff, students, and parent/legal guardians.



18. Physical Safety Issues

When requested, police services may work in cooperation with local schools to assess the physical safety of the school premises, including the building and outdoor areas. In all cases, final decisions about alterations rest with the school board, as does the responsibility to carry out any desired work.

19. Threat Management and Awareness Services

There is the need for, and value to, early intervention and risk assessment services. Incidents of violence in schools are often preventable through early intervention in response to threatening behaviour, or non-threatening but worrisome behaviour. The need for disciplinary action and police interventions may be reduced through the identification of at-risk students through early and ongoing assessment and intervention strategies. A multi-agency approach can be highly effective in preventing and managing situations that could otherwise negatively affect the safety of students and/or school staff.

School boards and community partners including mental health agencies, Youth Justice Probation Services and other youth-focused agencies can develop procedures to facilitate timely intervention in situations where a threat has been made or an individual is engaging in worrisome behaviour.

The use of Police Threat Assessment Units can be accessed through larger police services (OPP) or the assistance of local police services.

Community Violence Threat Risk Assessment Protocols (VTRA)

Violence prevention in our schools and neighbourhoods is a community responsibility. All community partners work together to promote and maintain safety and to strive to prevent violence. Police partners agree to attend all VTRA stage 1 meetings and participate in the gathering of information to inform level of risk and needs for ongoing safety. When appropriate, police partners will attend stage 2 VTRA meetings as well.

All partners agree to work together for the common goals of reducing violence, managing threats of violence, and promoting individual, school and community safety. We will do so by proactively sharing information, advice, and support.

As partners, we will work together for the benefit of children/youth, and their parent/guardians by:



- Building working relationships based on mutual respect and trust
- Working in ways that promote safe, caring and restorative school environments and practices
- Involving children, youth and their families in planning for services and supports
- Recognizing that each child and youth has unique strengths and needs that should be considered when developing an appropriate plan
- Realizing that working together successfully is a process of learning, listening, and understanding one another.
- Developing a VTRA Regional Committee involving both school board personnel and community agency representatives, as an advisory body to review individual cases, oversee training needs of community and update protocol.

Partners will commit to:

- on-going participation in a minimum of three Regional Committee meetings per year
- staff development and on-going training in threat risk assessment
- program review, and data collection
- designating a VTRA Lead/Advisor in each organization

For more information about VTRA, consult the *Guelph-Wellington-Dufferin VTRA Protocol*.

20. Emergency Planning and Threats to Safety

Schools will develop emergency and crisis response plans, review them annually and communicate these plans with the school community and local police services. The plans will include lockdown procedures, based on the *Provincial Policy for Developing and Maintaining Lockdown Procedures for Elementary and Secondary Schools in Ontario (June 2009)*, and procedures for dealing with bomb threats. Teachers, staff, parents/legal guardians, and students should be involved in the development and monitoring of emergency and crisis response plans, and the plan should be fully communicated to members of the school community, police services, and the fire department.



Police services may be approached by schools to participate in and assist with lockdowns and other safety-related procedures at schools.

21. Training

Joint training on this protocol based on effective/leading practices will be provided for school board and police staff annually and where possible delivered by both police and school board personnel.



APPENDIX A:

Glossary

Aggression

A forceful behaviour; an attack.

Bullying

Typically a form of repeated, persistent, and aggressive behaviour directed at an individual or individuals that is intended to cause (or should be known to cause) fear and distress and/or harm to another person's body, feelings, self-esteem, or reputation. Bullying occurs in a context where there is a real or perceived power imbalance.

Bullying takes on different forms and contexts with age. It can be physical, verbal, social/emotional or through the use of technology (cyberbullying). Bystanders contribute to bullying by doing nothing to prevent it or by becoming actively involved in supporting it.

Barricading

Creating a further barrier to a classroom or office that would obstruct the entry of an intruder, should the locked door be compromised. Barricading can be done by a number of means, including but not limited to adding a secondary locking mechanism or blocking the doorway with a large moveable object or with multiple smaller moveable objects. The barricade should be capable of being removed to allow exit from the room once the lockdown incident has been resolved.

Commodification of Sexual Activity

Commodification of sexual activity includes obtaining sexual services for consideration (i.e., money or any other item of value), obtaining financial or other material benefit from another person's provision of sexual services, and procuring a person to offer or provide sexual services.

Court Ordered Release

Court ordered release is any "order of probation" recognizance of bail, undertaking or officer in charge recognizance of bail, or officer in charge undertaking that releases a charged person from custody. These documents include conditions for the release of that person with non-association with victims, with accused, non-attendance, curfews, etc.



Criminal Harassment

Criminal harassment occurs when: (1) a person repeatedly follows an individual from place to place or repeatedly communicates, directly or indirectly, by any means (including electronic means), with an individual, or watches the home or place of work of an individual, or engages in threatening conduct directed at a person or a member of that person's family; and (2) the victim of the criminal harassment is caused to reasonably, in the circumstances, fear for his or her safety.

A single incident can constitute harassment.

Exigent Circumstances

Urgent, pressing, and/or emergency circumstances. Exigent circumstances usually exist when immediate action is required for the safety of the police or others. Such circumstances may include a bomb threat, a person possessing or using a weapon, or a fire on school property.

Expulsion

The removal of a student from his or her school or from all schools of the board. Students expelled only from their school are assigned to another school of the board. Students expelled from all schools of the board must be offered a program for expelled students. Activities for which expulsion must be considered are found in section 310(1) of the *Education Act*. An example is using a weapon to cause or to threaten bodily harm.

Extortion

The use of threats, intimidation, or violence towards a person to obtain something of value from that person or someone else, or to cause that person or someone else to do something.

Extra-Judicial Measures

Measures used by police to hold a young person accountable for their alleged criminal behaviour, in a timely manner, outside the formal youth justice system. The formal system would include charging the individual and going through the court process. Extra-judicial measures hold a youth accountable for their actions and provide sanctions outside of judicial proceedings. Some examples of sanctions include substance abuse counselling, volunteer work, repair of or compensation for damaged or stolen property, and a letter of apology.



Gang-Related Occurrences

Incidents involving a group, consisting of three or more persons, however organized, having as one of its main purposes the commission or facilitation of a criminal offence in which any or all of the members engage.

Hate and/or Bias-Motivated Occurrences

Incidents (e.g., involving statements, words, gestures) motivated by hatred or bias towards an identifiable group (e.g., a group distinguished by colour, race, religion, gender, sexual orientation, or ethnic origin) that are publicly communicated and that are willfully intended to promote or incite bias or hatred against such a group.

Harassment

Harassment is engaging in a course of vexatious conduct that is known or ought to reasonably be known to be unwelcome. Harassment is words, conduct or action that is directed at an individual and serves no legitimate purpose. This may include remarks, jokes, threats, name-calling, the display of material(s), touching or other behaviour that an individual knows or ought to know, insults, intimidates, offends, demeans, annoys, alarms or causes that individual emotional distress, and may constitute discrimination when related to grounds protected by the Human Rights Code.

Hold and Secure

When it is desirable to secure the school due to an ongoing situation outside and not related to the school (e.g., if a bank robbery occurs near a school but not on school property). In this situation the school continues to function normally, with the exterior doors being locked until such time as the situation near the school is resolved.

Lockdown

A procedure used in response to a major incident or threat of violence within the school, or in relation to the school.

Mitigating and Other Factors

Circumstances that must be considered by the board and school administrators in situations involving suspension and/or expulsion of a student, as required by the *Education Act* and as set out in Ontario Regulation 472/07 (quoted below):

1. “For the purposes of subsections 306 (2), 306 (4), 310 (3), 311.1 (4) and clauses 311.3 (7) (b) and 311.4 (2) (b) of the Act, the following mitigating factors shall be taken into account:



1. The pupil does not have the ability to control his or her behaviour.
2. The pupil does not have the ability to understand the foreseeable consequences of his or her behaviour.
3. The pupil's continuing presence in the school does not create an unacceptable risk to the safety of any person.

Other Factors

2. For the purposes of subsections 306 (2), 306 (4), 310 (3), 311.1 (4) and clauses 311.3 (7) (b) and 311.4 (2) (b) of the Act, the following other factors shall be taken into account if they would mitigate the seriousness of the activity for which the pupil may be or is being suspended or expelled:
 1. The pupil's history.
 2. Whether a progressive discipline approach has been used with the pupil.
 3. Whether the activity for which the pupil may be or is being suspended or expelled was related to any harassment of the pupil because of his or her race, ethnic origin, religion, disability, gender or sexual orientation or to any other harassment.
 4. How the suspension or expulsion would affect the pupil's ongoing education.
 5. The age of the pupil.
 6. In the case of a pupil for whom an individual education plan has been developed,
 - i. whether the behaviour was a manifestation of a disability identified in the pupil's individual education plan,
 - ii. whether appropriate individualized accommodation has been provided, and
 - iii. whether the suspension or expulsion is likely to result in an aggravation or worsening of the pupil's behaviour or conduct.”



Negative impact on school climate

A possible result of inappropriate activities or behaviours, whether those activities or behaviours occur inside or outside the school or school hours. Actions or behaviours that occur outside school hours may still have a negative impact on school climate. For example, cyber bullying often occurs outside school, but if it targets individual students and causes them to be afraid to come to school, it is having a negative impact on school climate.

Non-consensual sharing of intimate images

Knowingly publishing, distributing, transmitting, selling, making available, or advertising an intimate image of another person while knowing that the person depicted in the image did not give their consent, or being reckless as to whether the person gave their consent. The term “intimate image” refers to a visual recording such as a photograph, film, or video recording of a person in which the person is nude, partially nude, sexualized or engaged in explicit sexual activity.

OSR Access

The police can access a student’s Ontario Student Record (OSR) by warrant or subpoena, or with the written consent of a parent/legal guardian or student, if the student is 18 years of age or older, or 16- or 17-years-old and withdrawn from parental control. In exigent circumstances, the police can access a student’s OSR without a warrant under section 487.11 of the *Criminal Code*.

Parent/Legal Guardian

A person legally entrusted with the care of, and managing the property and rights of, another person, usually a child/youth who is under the age of 18. For the purposes of Part XIII of the *Education Act*, students who are 18 years of age or older, and students who are 16 or 17 years of age but have withdrawn from parental control, are considered to be adults.

Possession of Drugs

Having a controlled substance or unlawfully possessing prescription drugs (e.g., a drug or narcotic, as set out in the *Controlled Drugs and Substances Act*) in one’s personal possession or possessing it jointly with others, including knowingly possessing an illegal or prescription drug elsewhere.



Relationship-Based Violence

Any behaviour or action that is used to scare, harm, threaten, control, intimidate, or injure another person within an intimate relationship, past or present. The behaviour or action can be physical, sexual, or emotional, and it may comprise a single act of violence, regardless of the level of physical injury, or a number of acts forming a pattern of abuse through the use of assaultive and controlling behaviour.

Robbery

The use of violence or threats of violence to steal, or attempt to steal, money or other property from a victim.

Sexual Assault

Any type of unwanted sexual act done by one person to another that violates the sexual integrity of the victim. The term refers to a range of behaviours that involve the use of force or control over the victim. In some cases, no overt physical force is used – instead, the victim may be threatened with words or pressured into doing something they don't want to do.

Shelter in Place

An environmental or weather-related situation, where it is necessary to keep all occupants within the school to protect them from an external situation. Examples may include chemical spills, blackouts, explosions, or extreme weather conditions.

Suspension

The removal of a student from their school and all school-related activities for a minimum of one school day to a maximum of twenty school days. Activities for which suspension must be considered are found in subsection 306(1) of the *Education Act*. An example is possessing alcohol or illegal drugs.

Threats

Any statement, act, or communication, by any means, including electronic means, of an intent to cause harm, whether physical or emotional, to any person or thing, in circumstances where the person threatened *believes or has grounds to believe* the threat may be carried out.



Trafficking

Assisting in any manner with the distributing of a controlled drug (prescription or illegal) or substance, or one held out to be (believed to be), as set out in the *Controlled Drugs and Substances Act*, or with the distributing of weapons.

Weapon

Any article designed as a weapon or used or intended to be used for the purpose of threatening, intimidating, or injuring a person. All firearms, including replica firearms and imitation firearms, are always considered weapons.



APPENDIX B:

Guide to Officers for Section 146

Youth Criminal Justice Act Statements

The Ontario Court of Appeal has emphasized the importance of recording any statement of an accused person on video. This is even more important when contemplating charges against or taking the statement of a young person where the informational components of Section 146 must be explained to the young person in language appropriate to the particular young person's age and understanding. The best way to demonstrate that you have tailored your explanation to the age and understanding of the young person is by way of video.

- It is imperative that the young person clearly understands everything that is being said and explained to them.
- It is insufficient to simply read the form to the young person and ask if they understand.
- An individualized, objective approach that takes into account the level of sophistication and other personal characteristics relevant to the young person's understanding is required when conducting the interview.
- Prior to asking any of the questions set out in the statement form, you are required to acquire some insight into the level of understanding of the young person you are interviewing in order to determine the appropriate language to use in explaining their rights. It would be of evidentiary value to record this initial interaction with the youth while gauging their level of understanding.
- This requirement involves learning something about the young person's level of education, language and vocabulary skills, ability to comprehend and emotional state.
- This requirement can only be achieved by engaging the young person in conversation. Consideration should be given to the following non-exhaustive list of questions:
 - How old are you?
 - What grade are you in?
 - What school do you attend?



- Do you have a learning disability?
 - Are you in a special education class?
 - Have you been arrested before?
 - Have you given a statement to a police officer before?
- Once you have acquired the necessary insight into the young person’s level of understanding, you will be in a position to tailor your explanation of the Section 146 requirements to the capabilities of the particular young person you are interviewing.
 - While you are not required to have the young person “explain back” their rights, in some instances, this may well demonstrate that your explanations were both appropriate and sufficient.
 - A simple and appropriate way to determine whether the young person understands is to ask, “What does this mean to you in your own words?”



STATEMENT OF A YOUNG PERSON

Youth Criminal Justice Act, Section 146

1. Statement Recording Method:

Audiotape (No._____) Written DVD (No._____) Videotape No._____)

Police Service: _____ Police Case ID: _____

Occurrence No: _____

Date: _____ Location: _____ Start Time: _____ Time Completed: _____

Interviewing Officer(s): _____

Name of Young Person: _____ Date of Birth: _____

Address: _____ Phone Number: _____

You are charged with: _____ You may be charged with: _____

2. Do you understand the charge(s)?

Reply: _____

If at any time you do not understand anything, tell me and I will explain it to you. Do you understand?

Reply: _____

3a. **THIS SECTION APPLIES ONLY TO YOUTHS WHO ARE 14 YEARS OF AGE OR OLDER AT THE TIME OF THE ALLEGED OFFENCE AND THE OFFENCE IS 1ST OR 2ND DEGREE MURDER, ATTEMPTED MURDER, MANSLAUGHTER OR AGGRAVATED ASSAULT.**

As you are 14 years old, or older, and you are charged with _____, if you are found guilty, the Crown will ask the court to give you an adult sentence. The most severe adult sentence is life in prison. It is up to the court to decide whether you will be sentenced as a young person or an adult.

Not Applicable _____ (officer's initials) Warning Read: Yes

Do you understand? Yes No

3b. **THIS SECTION APPLIES TO YOUTHS WHO ARE 14 YEARS OF AGE OR OLDER AT THE TIME OF THE ALLEGED OFFENCE AND THE OFFENCE IS ONE FOR WHICH AN ADULT IS LIABLE TO IMPRISONMENT FOR MORE THAN TWO YEARS.**

As you are 14 years old, or older, if you are found guilty, the Crown may ask the court to give you an adult sentence. The most severe sentence is life in prison. It is up to the court to decide whether you will be sentenced as a young person or an adult.

Not Applicable _____ (officer's initials)

Do you understand? Yes No



STATEMENT OF A YOUNG PERSON

4a. You have the right to talk to a lawyer in private without delay.

Do you understand?

Reply:

b. You can also get immediate legal advice from a free Legal Aid Lawyer by calling 1-800-562-2561 or 1-800-265-0451.

Do you understand?

Reply:

c. If you are charged with an offence, you may apply to Ontario Legal Aid for legal assistance.

Do you understand?

Reply:

d. You also have the right to speak, without delay and in private, to a parent/legal guardian, or in the absence of a parent/legal guardian, an adult relative, or in the absence of an adult relative, another appropriate adult whom you feel may assist you.

Do you understand?

Reply:

e. If you make a statement to the Police, the Police must have the person(s) you spoke with here while you make a statement unless you do not want them or any one of them here.

Do you understand?

Reply:

f. Do you want to talk to a lawyer?

Reply:

g. Do you want to talk to one or both of your parent/legal guardians?

Reply:

h. If your parent/legal guardian(s) are not available, do you want to talk to an adult relative?

Reply:

i. If an adult relative is not available, do you want to talk to another appropriate adult?

Reply:



STATEMENT OF A YOUNG PERSON

5. **IF THE YOUNG PERSON INDICATES THAT HE/SHE WISHES TO SPEAK TO ANY OF THE ABOVE PERSONS, THE OFFICER CONDUCTING THE INTERVIEW MUST NOW FACILITATE THOSE CONVERSATIONS.**

Do you wish to make a statement?

Reply: _____

If you decide to make a statement, you can stop at any time. You can also at any time talk to a lawyer and a parent/legal guardian, adult relative or an appropriate adult, and have that person here with you.

Reply: _____

6. **WAIVER OF RIGHTS**

I have been given the opportunity to obtain immediate free advice from a Legal Aid Lawyer and the opportunity to talk to a lawyer and my parent/legal guardian(s); or, in the absence of a parent/legal guardian, an adult relative; or, in the absence of a parent/legal guardian or adult relative, another appropriate adult. I have been informed that the Police must have the people with whom I have just spoken present when making a statement unless I do not want them, or any one of them, with me during this interview. These rights have been explained to me and I understand.

I choose not to talk with any of these people.

Signature of Young Person

I do not want any of them here with me during this interview.

Signature of Young Person

Witness

Time

Name of Person Present: Parent(s) Adult Relative Other Appropriate Adult:

Address: _____ Phone Number: _____

7. **CAUTION**

You do not have to say anything about the charge(s) unless you want to.

Do you understand?

Reply: _____

I also have to tell you that whatever you do say will be recorded in writing or on audio and may be given in evidence against you in court.

Do you understand?

Reply: _____



STATEMENT OF A YOUNG PERSON

8. SECONDARY CAUTION

If you have spoken to any other Police officer or if anyone else has spoken to you in connection with this matter, I want it clearly understood that I do not want it to influence you in making a statement.

Do you understand?

Reply: _____

You are reminded that you do not have to say anything about this charge unless you want to.

Do you understand?

Reply: _____

Do you wish to make a statement?

Reply: _____

Signature of Young Person: _____ Time Completed: _____

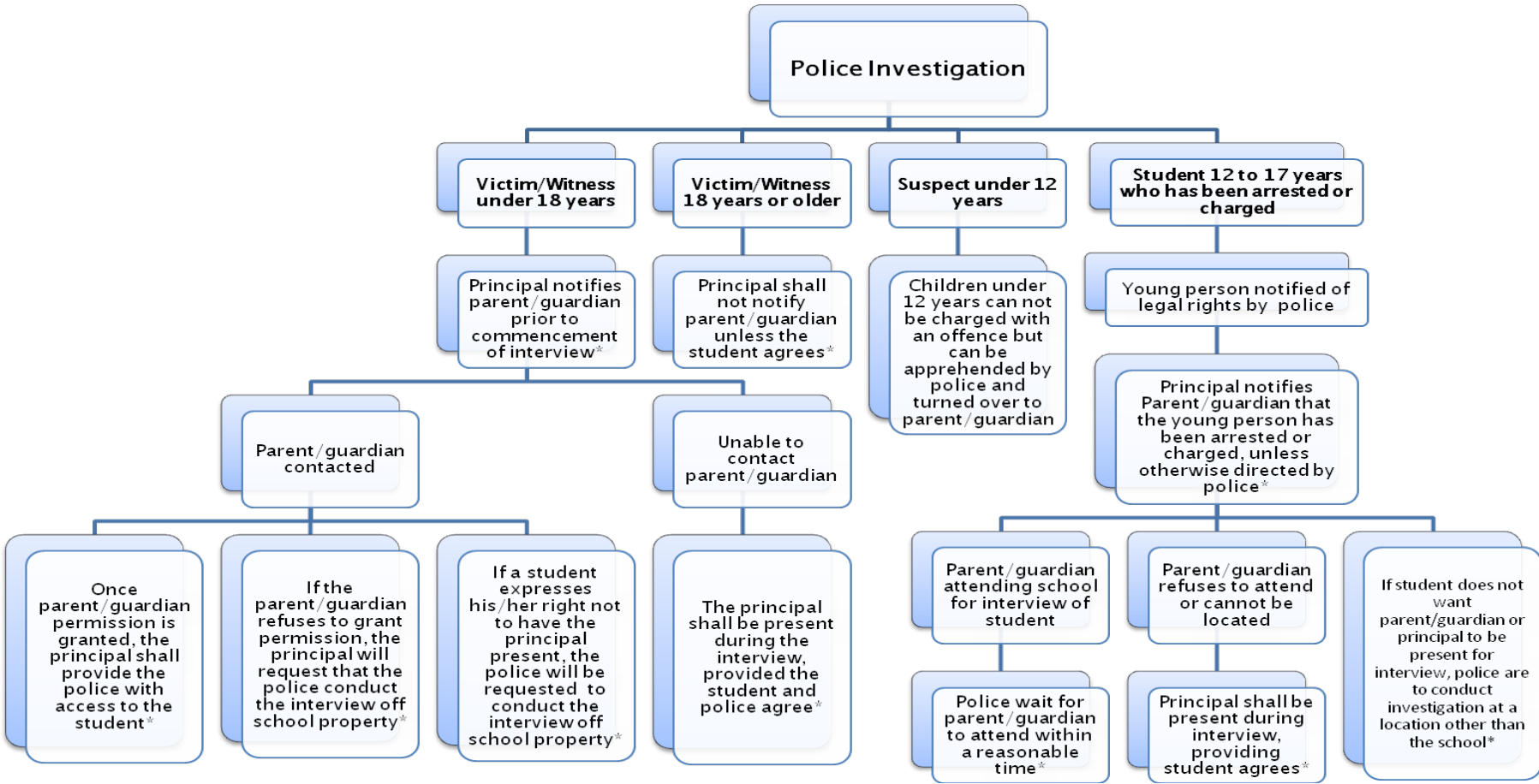
Witnesses:

(1) _____ Signature

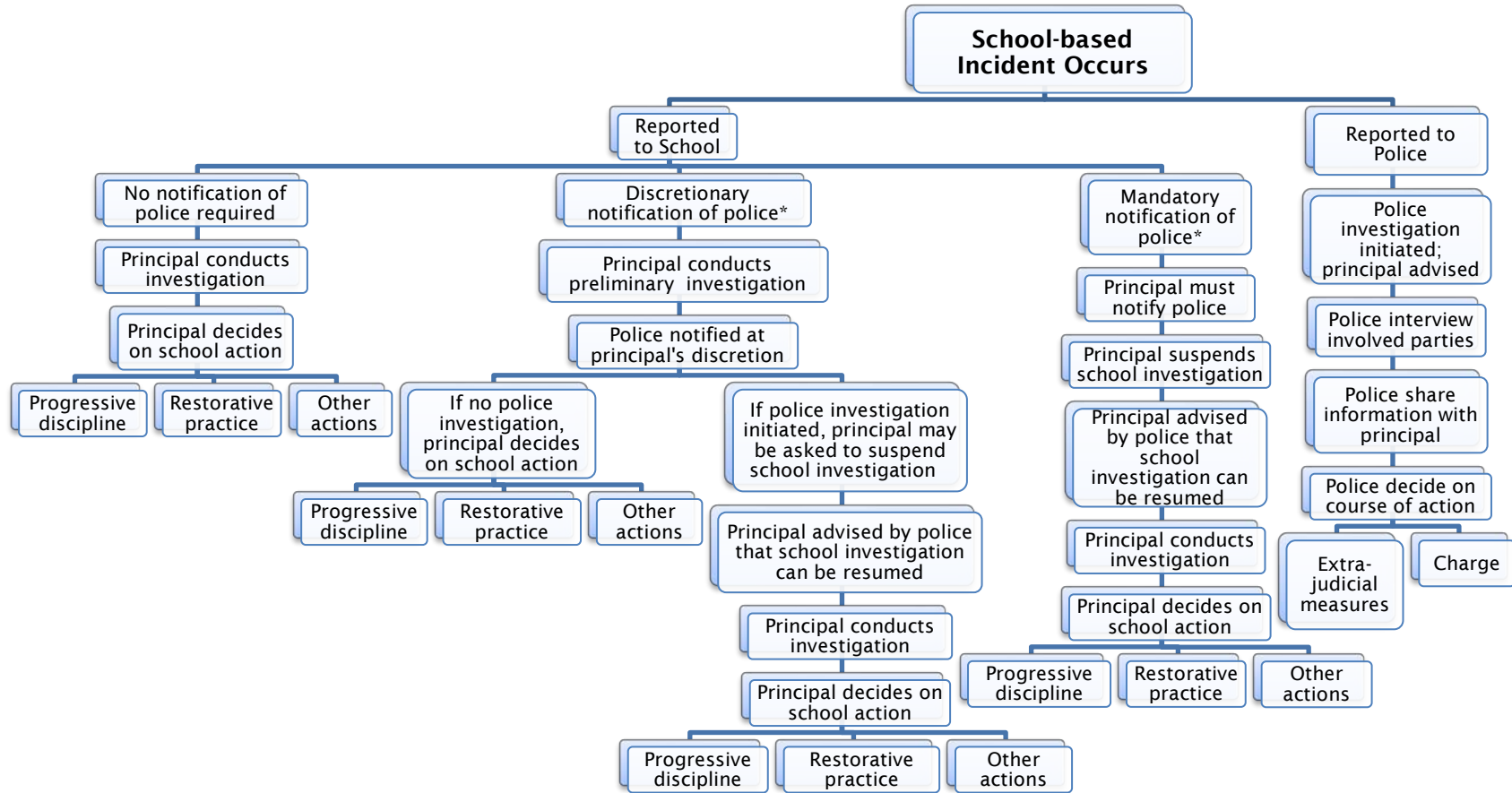
(2) _____ Signature



APPENDIX C: Notification Flow Chart



APPENDIX D: Parallel Investigation Flow Chart



APPENDIX E:

Province of Ontario

Reporting Child Abuse and Neglect: It's Your Duty

Your responsibilities under the Child, Youth and Family Services Act

The *Child, Youth and Family Services Act* (CYFSA) recognizes that each of us has a responsibility for the welfare of children.

Introduction

We all share a responsibility to protect children from harm. This includes situations where children are abused or neglected in their own homes. Ontario's CYFSA provides protection for these children.

Section 125 of the CYFSA states that the public, including professionals who work with children, must promptly report any suspicions that a child is or may be in need of protection to a children's aid society (society). The CYFSA defines the phrase "child in need of protection" and explains what must be reported to a society. It includes physical, sexual and emotional abuse, neglect, and risk of harm.

This brochure explains the "duty to report" section of the CYFSA and answers common questions about your reporting responsibilities. It also includes relevant portions of Section 125 for your reference. It does not provide specific legal advice. Please consult a lawyer or a society about any specific situation.

Who is a "child in need of protection"?

The CYFSA defines a child in need of protection and clearly specifies how you can identify these children in Section 125 (1). (See pages 8 to 11). [CYFSA s.125 (1)] This includes a child who is or may be suffering from abuse or neglect.

Who is responsible for reporting a child in need of protection?

Anyone who has reasonable grounds to suspect that a child is or may be in need of protection must promptly report the suspicion and the information upon which it is based to a society. Section 125 (1) describes the specific circumstances that must be reported (See pages 8 to 11). [CYFSA s.125 (1)]



What are “reasonable grounds” to suspect child abuse or neglect?

It is not necessary for you to be certain a child is or may be in need of protection to make a report to a society. “Reasonable grounds” refers to the information that an average person, using normal and honest judgment, would need in order to decide to report.

What is the age of the children to whom the “duty to report” applies?

It applies to any child who is, or appears to be, under the age of 16 years.

On January, 2018, Ontario raised the age of protection from 16 to 18. A professional, or member of the public, who is concerned that a 16- or 17- year-old is or may be in need of protection may, but is not required to, make a report to a society and the society is required to assess the reported information. [CYFSA s.125 (4)]

What does an “ongoing duty to report” child abuse or neglect mean?

Even if you know a report has already been made about a child who is under 16, you must make a further report to the society if there are additional reasonable grounds to suspect that the child is or may be in need of protection. [CYFSA s.125 (2)]

Can I rely on someone else to report?

No. You have to report directly to a society. You must not rely on anyone else to report on your behalf. [CYFSA s.125 (3)]

Do professionals and officials have any special responsibilities to report?

Professionals and officials have the same duty as the rest of the public to report their suspicion that a child is or may be in need of protection. However, the CYFSA recognizes that people working closely with children have a special awareness of the signs of child abuse and neglect, and a particular responsibility to report their suspicions. Any professional or official who fails to report a suspicion is liable on conviction to a fine of up to \$5,000, if they obtained the information in the course of their professional or official duties. Reporting is not mandatory in the case of 16- and 17- year-olds and the offence/penalty provisions do not apply. [CYFSA s.125 (5), (8), (9)]

Who does the Act consider a person who performs professional or official duties?

- health care professionals, including physicians, nurses, dentists, pharmacists and psychologists



- teachers and school principals
- social workers and family counsellors
- religious officials
- operators or employees of a child care centre or home child care agency
- youth and recreation workers (not volunteers)
- peace officers and coroners
- child and youth service providers and employees of these service providers
- any other person who performs professional or official duties with respect to a child

In addition to the professionals and officials outlined above, directors, officers or employees of a corporation also have a legislated duty to report if they have knowledge that a child who is under 16 is or may be in need of protection. [CYFSA s.125 (8)]

These are examples only. If you are unsure whether you fall into any of these categories, ask your local society, or the legal counsel for your professional organization, regulatory body, or organization. [CYFSA s.125 (6)]

What about professional confidentiality?

A professional must report that a child is or may be in need of protection, even when the information is otherwise confidential or privileged. This duty overrides any other provincial statutes, including the *Personal Health Information Protection Act, 2004*, and specifically overrides any provisions that would otherwise prohibit someone from making a disclosure. Only lawyers may not divulge “privileged” information about their clients. [CYFSA s.125 (10), (11)]

Will I be protected from liability if I make a report?

The CYFSA provides that no action for making the report will be instituted against a person who makes a report unless the person acts maliciously or without reasonable grounds for the suspicion. [CYFSA s. 125 (10)]

What happens when I call a society?

The society will investigate the information. The society has the responsibility and authority to investigate allegations and to protect children. The society may involve the



police and other community agencies. All societies provide emergency service 24 hours a day, seven days a week.

Consistent with the best interests, protection and well-being of children, services from a society will take the following into consideration:

- respect for a child's need for continuity of care and for stable relationships within a family and cultural environment
- the physical, emotional, spiritual, mental and developmental needs and differences among children
- a child's race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, sex, sexual orientation, gender identity and gender expression
- a child's cultural and linguistic needs
- the goal of achieving permanent plans for children in accordance with their best interests
- the participation of a child, the child's parents and relatives and the members of the child's extended family and community, where appropriate. [CYFSA s. 1 (2)]

How do I contact a society or get more information?

You can find your local society in your local telephone listings or, where available, by dialing 411. In some communities, the society is known as "family and children's services" or "child and family services".

You can also find information about all of Ontario's societies at www.oacas.org, the web site of the Ontario Association of Children's Aid Societies.

Anyone who has a reasonable suspicion that a child is or may be in need of protection must contact a society immediately.

If you think the matter is urgent and you cannot reach the society, call your local police.

Section 125 (1) of the *Child, Youth and Family Services Act, 2017*

Despite the provisions of any other Act, if a person, including a person who performs professional or official duties with respect to children, has reasonable grounds to suspect one of the following, the person shall forthwith report the suspicion and the information on which it is based to a society:



1. The child has suffered, or there is a risk that the child is likely to suffer, physical harm inflicted by the person having charge of the child or caused by or resulting from that person's:
 - i. failure to adequately care for, provide for, supervise or protect the child, or
 - ii. pattern of neglect in caring for, providing for, supervising or protecting the child.
2. The child has been, or there is a risk that the child is likely to be, sexually abused or sexually exploited by the person having charge of the child or by another person where the person having charge of the child knows or should know of the possibility of sexual abuse or sexual exploitation and fails to protect the child.
3. The child requires treatment to cure, prevent or alleviate physical harm or suffering and the child's parent or the person having charge of the child does not provide the treatment or access to the treatment, or, where the child is incapable of consenting to the treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to, the treatment on the child's behalf.
4. The child has suffered emotional harm, demonstrated by serious:
 - i. anxiety
 - ii. depression
 - iii. withdrawal
 - iv. self-destructive or aggressive behaviour, or
 - v. delayed development,

and there are reasonable grounds to believe that the emotional harm suffered by the child results from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child.

5. There is a risk that the child is likely to suffer emotional harm of the kind described in subparagraph 6 i, ii, iii, iv or v and the child's parent or the person having charge of the child does not provide services or treatment or access to services or treatment, or, where the child is incapable of consenting to treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to, treatment to remedy or alleviate the harm.



6. The child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent or the person having charge of the child does not provide the treatment or access to the treatment, or where the child is incapable of consenting to the treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to, treatment to remedy or alleviate the condition.
7. The child's parent has died or is unavailable to exercise custodial rights over the child and has not made adequate provision for the child's care and custody, or the child is in a residential placement and the parent refuses or is unable or unwilling to resume the child's care and custody.
8. The child is younger than 12 and has killed or seriously injured another person or caused serious damage to another person's property, services or treatment are necessary to prevent a recurrence and the child's parent or the person having charge of the child does not provide services or treatment or access to services or treatment, or, where the child is incapable of consenting to treatment under the Health Care Consent Act, 1996, refuses or is unavailable or unable to consent to treatment.
9. The child is younger than 12 and has on more than one occasion injured another person or caused loss or damage to another person's property, with the encouragement of the person having charge of the child or because of that person's failure or inability to supervise the child adequately.

If someone has reasonable grounds to suspect that a child **under 16** is or may be in need of protection, they **must** make a report directly to a society. A report may be made regarding 16- and 17-year-olds if there are concerns that they are, or may be, in need of protection.

