

**THE COUNSEL FOR CHILDREN
PROGRAM AND
SASKATCHEWAN SCHOOLS:**

**A GUIDE FOR WORKING TOGETHER TO SUPPORT
PUPILS IN THE SCHOOL SETTING WHO ARE
INVOLVED IN CHILD PROTECTION PROCEEDINGS**

April 2016

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This document has been prepared by representatives from:

- Saskatchewan Ministry of Justice, Counsel for Children Program,
- Saskatchewan Ministry of Education
- Saskatchewan Ministry of Social Services
- Saskatchewan School Boards Association.

This document is intended to be used as a guide for information and discussion purposes. Each particular case must be addressed on an individual basis. **It is not binding on any individual or organization, or government agency.** The *Guide* is intended to facilitate processes and conversations among school personnel, legal counsel, caseworkers and others who work together to support children involved in child protection proceedings.

The material provided in this document is for general information purposes only and should not be relied upon as legal advice.

Further information about the Counsel for Children program can be found at:
<https://www.saskatchewan.ca/residents/justice-crime-and-the-law/courts-and-sentencing/counsel-for-children>

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Introduction

This *Guide* is intended to facilitate working relationships between education authorities, lawyers appointed to represent children under the Counsel for Children Program, and child protection officials.

The *Guide* will facilitate the ability of multiple agencies to work together to support the child following investigations into allegations of child abuse or neglect, where legal processes such as child protection proceedings may have been initiated. This *Guide* supports the collaborative approach to investigations of child abuse and neglect and follow-up action as set out in the *Saskatchewan Child Abuse Protocol* which can be found at: <https://publications.saskatchewan.ca/#/products/12574>

Supporting access to Counsel allows the child's voice to be heard in court or other proceedings. A child's participation in the proceeding often leads to timely resolution and reduced stress or trauma for the child in the child protection matter.

In all cases, the best interests of the child must be the foremost consideration of all parties, and should include consideration of the views of the child. This *Guide* is intended to assist all parties in that goal by:

- providing background information to assist parties in understanding the role of each agency;
- outlining considerations to be taken into account when communicating with each other; and
- providing suggested processes to assist parties to minimize negative impacts on children.

The *Saskatchewan Child Abuse Protocol* includes the following goals:

- encouraging multi-disciplinary, collaborative, adaptive and responsive partnerships among all professionals to enhance the safety and well-being of children;
- improving co-operation among professions towards a common goal of improved management of child abuse cases;
- ensuring a consistent approach for all those in contact with children when reporting, investigating and processing child abuse cases and in providing support to children; and
- promoting child-centered investigations and support services to reduce the likelihood of children's re-victimization.

Definitions

For the purpose of this *Guide*:

- **“Principal”** is the person designated as the contact person by and for the school division to make arrangements with a lawyer appointed to represent a child and may be the school Principal or the Superintendent of a school division.
- **“caseworker”** means a Ministry of Social Services caseworker or a First Nations Child and Family Services caseworker
- **“child”** generally has the same meaning as the word “pupil” in *The Education Act, 1995*, for those under age of 18 years and presumes the child is registered to attend a specific school within a school division.
- **“Counsel”** means the lawyer appointed as legal counsel for a child pursuant to the Counsel for Children Program.

A. ROLES AND RESPONSIBILITIES

1. The Role of the Counsel for Children Program

The “Counsel for Children” program [CFC] was established in December, 2014, through amendments to *The Public Guardian and Trustee Act* and *The Queen’s Bench Act*. The program aims to promote the child’s right to be heard in proceedings which affect them pursuant to Article 12 of the *United Nations Convention on the Rights of the Child*. Under the program, a roster of trained private bar legal counsel is available to represent children involved in child protection proceedings.

Appointments of Counsel are made when a judge orders that Counsel be appointed, or when the Public Guardian and Trustee assesses that there is a need for Counsel to represent a child and appoints Counsel through the CFC program. The letter of appointment will be signed by the CFC Children’s Counsel.

The criteria used for determining whether to appoint Counsel include the child’s request for Counsel, and the complexity or the seriousness of the issues. Where the child is too young or otherwise unable or unwilling to express a view, Counsel may still be appointed to ensure that the proceedings clearly focus on the best interests of the child.

All Counsel approved to be on the roster must have provided to the CFC a recent clear criminal record check, including a vulnerable person check.

Where Counsel is appointed for a child, the CFC informs the caseworker so that they can advise the caregiver and the child.

2. Role of Counsel

Under the CFC program, Counsel takes instructions directly from the child and supports the child to ensure that the child can participate in and communicate their views respecting child protection proceedings. Counsel needs to be able to speak to the child in absolute confidence and develop a trust relationship with the child.

In child protection proceedings, the child needs to be able to access Counsel in a timely, safe and comfortable environment. Counsel for the child requires “reasonable access” to the child in order to represent the child, which is recognized in the legislation (see section 6.3(7) of *The Public Guardian and Trustee Act*). As with other professionals, the school must allow children to attend appointments with their Counsel, even when it is the child, and not the parent or guardian, who makes the appointment. (The protocols or procedures of the school with regard to checks, documentation, safety measures, etc. will apply).

Counsel seeking to have contact with a child during school hours or at a school location should contact the Director of Education of the school division. In most cases, the appropriate contact is expected to be the school Principal. For example, Counsel appointed for a child may contact a Principal to seek school staff’s support or assistance in having access to the child or to determine the child’s availability to meet with Counsel in a way which does not unduly disrupt the child’s day.

Occasionally, Counsel may also contact a school to seek information about the child from the child’s cumulative record or from teachers or guidance counsellors who know the child. These requests are governed by *The Local Authority Freedom of Information and Protection of Privacy Act* (LAFOIP). For further information, please see **Appendix B –Sharing Pupil Information**.

3. The Role of School Divisions and Schools

Schools are owned and operated by Boards of Education and the Conseil Scolaire pursuant to duties and powers described in *The Education Act, 1995*. School principals are responsible for the supervision, order, efficiency and safety of the school and for the children in their care. As a result, boards of education and schools have a duty to control access to the school and to the pupils in the school. In addition, boards of education and schools have a duty to provide an appropriate educational environment suitable for learning for all children in their care. The school division has the right and the duty to set appropriate conditions for any person who wishes to enter a school.

Counsel for the child or caseworkers should become familiar with or inquire about the school division’s policies or procedures required allowing access to the child at that school when seeking to meet with or speak to a child while at school. School divisions should have clear processes and procedures and should make these readily available for caseworkers and Counsel.

As well, the Principal may be asked for advice on best practices for contacting the child, both within and without the school setting. The Principal may also be consulted by Counsel regarding what supports Counsel might need to arrange to assist the child to be able to communicate with Counsel. The Principal can also consider whether it is in the best interests of the child to offer any other supports that might be available through the school division.

Caseworkers may disclose information to school personnel or to Counsel pursuant to section 74(1)(b) of *The Child and Family Services Act* in circumstances where the disclosure of the information is required in order to carry out the purposes of the *Act*.

The Principal must keep any information received from a caseworker or from Counsel confidential and share it only with those school personnel who require the information in order to provide education support to the pupil. The information should not be put on the pupil's cumulative record but should be kept in a separate file, accessible only to those school personnel who require the information in order to perform their duties.

Appendix B –Sharing Pupil Information sets out information and processes for school division personnel and Counsel to consider with regard to sharing of pupil information.

4. The Role of Ministry of Social Services as Parent/Guardian

In most circumstances, any child who is being represented by the CFC Program will be a child who is in the custody of the Minister of Social Services, meaning that the Minister has all the rights and responsibility of a parent. These rights and responsibilities are further delegated to caseworkers.

In some instances, the caseworker or a foster parent may facilitate the meeting of a child and Counsel. In other instances, it may be inappropriate for the Ministry or the foster parent to be involved in the arrangements due to the issues involved or the trust level of the child. In such cases, it may be the child and/or Counsel who make the meeting arrangements directly.

B. PROCEDURES FOR MEETING A CHILD DURING SCHOOL HOURS

1. **Identification:** A caseworker or Counsel for a child will be required to provide identification on initial contact with the school, or whenever requested by the Principal

Counsel for the child should also be prepared to provide the school with a copy of the letter of engagement as Counsel for the child.

2. **Providing Information to School Officials:** Any caseworker who is facilitating a meeting for Counsel during school hours must provide information to the Principal confirming that the child is in the care of the Ministry or First Nations Child and Family Services. If necessary, a letter may be provided which confirms that the child is in care/custody pursuant to *The Child and Family Services Act*.

3. a. Request for Counsel to meet the child away from school premises

If it is necessary for the child to meet with Counsel during school hours, the caseworker or person having care of the child may be asked by Counsel or by the school authorities to confirm the child's circumstances/status and to appropriately support the child.

School procedures for release of pupils from classes must be followed. In most situations, requirements will include:

- Verbal notice from the parent or guardian of the pupil as to the time of the appointment and the time by which the pupil must leave the school in order to attend the appointment.
 - Because of the unique nature of the relationship, in the case of appointments with Counsel, schools must be willing to accept the verbal notice of the appointment from Counsel, or confirmation of the appointment from Counsel if the appointment is made by the pupil.
- Information as to who will pick the pupil up to take the pupil to the appointment (or other instructions as to how the pupil will go to and from the appointment).
- Approximate time to expect the return of the pupil from the appointment.

A school division may reserve the right to receive written confirmation of the appointment from the Counsel providing the services.

b. Request for Counsel to meet the child on school premises

Establishing a trust relationship between Counsel and child is a necessity in order for Counsel to properly advise the child. Especially in the case of initial meetings, it may be difficult to find an appropriate location for such a meeting. In some circumstances, Counsel might request that a child meet with Counsel on school premises.

School divisions may have policies which do not permit professionals to provide services to pupils on school premises. These policies should be considered in light of the best interests of the child involved in the CFC program.

Meetings on school premises may be an exception to school policies. Where a Principal, after considering the specific facts and circumstances, determines that the best interests of the child will be served by allowing Counsel to meet with the child on school premises, a meeting may be authorized at the school. In such situations, the meeting shall be arranged for a time that is least disruptive to the educational process (preferably outside school hours), while giving appropriate consideration to the needs of the child, including privacy.

Principals and Counsel may refer to ***Appendix A - Considerations Regarding Meetings on School Premises*** which sets out some of the factors that may be considered in this decision-making process.

c. Sharing information with parents/guardians

In general there is no problem with school personnel advising foster parents or caseworkers about dates and time of meetings with Counsel. In cases where Counsel believes that a meeting with a child needs to take place without telling a foster parent or caregiver in order to ensure that the child is able to communicate with counsel without risk of any undue influence or barriers being created to such contact, Counsel shall consult with the Principal as to how such access can occur in the best interests of the child.

If a natural parent requests information concerning Counsel's interaction with the child, the information shall not be shared with the natural parent unless there is consent of Counsel.

All parties are encouraged to work together to minimize disruption for the child and for the school as an educational environment.

Appendix A - Considerations Regarding Meetings on School Premises

1. Why is ready access to Counsel important?

- Child protection matters can move very quickly – in some cases a first appearance may take place within a week of the child becoming involved with the Ministry of Social Services;
- Supporting access to Counsel allows the child’s voice to be heard in court or other proceedings; and
- A child’s participation in the proceedings often leads to timely resolution, reduced stress and trauma for the child and is more likely to produce a result that is in the best interests of the child.

2. Why might Counsel request to hold a Counsel-child meeting at school?

- School can be a place of comfort and safety for a child involved in child protection proceedings;
- The child may have requested to meet with Counsel at the school;
- Meeting at school may accommodate some urgent need for Counsel and the child to communicate; and
- In some communities, the school may offer the most secure and private place for the child and Counsel to meet.

3. How should Counsel make the request?

- Counsel may make the initial request verbally, but should follow up with the request in writing (email, letter, fax)
- The written request should contain the following:
 - Proof of identity and appointment if not already provided to the school division;
 - Identification of guardian (caseworker, foster parent) if not previously provided to school ;
 - The preferred date for the meeting , together with any optional dates or times; and
 - The reason for the request to meet at the school and any special circumstances that Counsel is able to share about why the school is considered the best place for the meeting, recognizing that Counsel may be limited in what they can share without violating their client’s privacy/privilege.

- Some additional information that might be helpful to the school in making its decision includes:
 - Is the meeting with just one child or with several siblings?
 - Have other meeting options (such as venues, times) been explored and rejected?

4. What factors should the School Division take into account when considering the request?

Specific factors that can be considered by the school division include, but are not limited to the following:

- What are the wishes of the child?
- What is in the best interest of the child?
- What are the reasons given by Counsel for requesting a meeting to take place at the school?
- Will a meeting at school be unnecessarily disruptive of the school environment, for example:
 - What other event/s might be taking place at the school?
 - What other disruptions might have an impact on the child at around that time – concerts, preparation for exams, other meetings with third parties, recent illness, etc.
- Is there a suitable room within the school for the meeting?
- Have other reasonable alternative sites been considered? (In some cases, school personnel may be able to suggest locations that Counsel might not be familiar with, such as other professional offices in the town.)

After discussion with Counsel and after carefully considering relevant factors including the considerations described in clause 5 below, if the Principal is satisfied that the request to meet in the school is the most reasonable option, if the child's class schedule is able to be accommodated, and if allowing the meeting on school premises is in the best interests of the child, the Principal may decide to facilitate the meeting during regularly scheduled class time or outside of scheduled class time but in the school premises.

5. Considerations for schools where a meeting is to take place on school premises

a. What is the best time for the meeting?

- Can it be held before or after school or during breaks in the child's schedule?
- What time would cause the least interference with the child's schedule?
- What time would cause the least interference with other pupils and staff at the school?
- What time would allow the most privacy for Counsel to meet with the child?

If the meeting is held after school, the school division will have to ensure that there is staff present to lock the facility or may have to arrange for its janitorial staff to clean the facility.

b. What is the best place for the meeting?

- At what location can privacy for the meeting best be achieved?
- What will be the most discrete route or method to have the child attend at the meeting room?

c. Are there any educational supports that the school should consider, for example, assistance with classwork that is missed because of the meeting?

Appendix B –Sharing Pupil Information

1. Ability to Share Pupil Information

Schools have a great deal of personal information about their pupils. Some of this information may be very helpful for Counsel when providing advice to the child.

Each school division is subject to *The Local Authority Freedom of Information and Protection of Privacy Act* (LAFOIP). LAFOIP grants the school division's privacy coordinator discretion to release pupil information and records to third parties in certain circumstances. The Ministry of Social Services and appointed Counsel do not have automatic right of access to school division records. The school division should evaluate each request for information or records received from third parties based on its LAFOIP obligations.

There are several sections of LAFOIP that allow a school division the discretion to share personal information of the child with the child's Counsel:

- Section 28(2)(l) where necessary to protect the mental or physical health or safety of any individual.
- Section 28(2)(n) for any purpose where, in the opinion of the school division, the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure or where the disclosure would clearly benefit the individual to whom the information relates.
- Section 49(e) with the written authorization of the child provided that the child has sufficient maturity and capacity to provide this consent.
- Section 49(d) with the written consent of the parent or guardian but is subject to the privacy interests of the child.
- Section 10(c) of the LAFOIP Regulations – where the disclosure may be expected to assist in the provision of services for the individual's benefit.

2. Process for Counsel to Make Requests for Information

Section 6(2) of LAFOIP requires a child's Counsel to "specify the subject matter of the record requested with sufficient particularity as to time, place and event to enable an individual familiar with the subject

matter to identify the record”. The Counsel’s request must be in writing and should include the written consents from the guardian, which may be the caseworker if the child is in care.

A child may be a mature minor¹ and may give consent in some circumstances. If the Counsel’s confirmation of appointment has not already been provided, it should accompany the LAFOIP request.

A sample consent form can be found in ***Appendix C – Consent for Release of Information for Counsel appointed by the Counsel for Children (CFC) Program***

Counsel should make a timely request for records. While 30 days is allowed to the school division to respond to requests for records, the school division will endeavour to respond to such requests in a timely manner recognizing that court proceedings are required by legislation to occur quickly in child protection matters. Last minute requests for access to records by the Counsel may not be able to be accommodated.

The school division is not obliged to create new records but the Counsel may request existing records such as reports. If the Counsel does not know the name of the record sought, they should identify the type of information that might be helpful. It is not helpful to ask for the child’s “entire file”.

3. Process for School to Respond to Requests from Counsel

All requests for access to information should be forwarded to the Principal, who will then deal with the request as determined by school division policy.

The school division will ensure that its policy and procedures and LAFOIP are followed.

Any records released by the school division under LAFOIP should include a cover letter indicating that they are disclosed pursuant to a request by the child’s Counsel and identifying the sections of LAFOIP upon which the school division relies to release the records.

¹ A mature minor is an individual under the age of 18 years who, in the opinion of the director of education or designate, is of sufficient maturity to provide consent to release private records. It is recommended that school divisions contact their legal counsel for further discussion if necessary.

The school division will either send or give the records directly to the appointed Counsel. The school division must not give the records to the child or to the Ministry of Social Services or its caseworkers to take to the Counsel.

The school division has the discretion to impose an application fee and fees for access to records by the child's Counsel as described in s. 5 of the LAFOIP Regulations.

4. Retention and Disposal of Records related to the Appointment of Counsel

Records related to the appointment of Counsel shall be retained by the school division for the same period of time as cumulative records. The records must then be disposed of in a secure manner.

Upon a transfer of a child to a new school in Saskatchewan the information or relating to the appointment of Counsel shall be transferred with the cumulative records.

It is recommended that Counsel contact the new school as soon as possible to update the file if necessary.

Appendix C

Consent for Release of Information to Counsel appointed by the Counsel for Children (CFC) Program

To: Principal of _____ School

Re: _____
Name of Pupil

I _____ consent to the release to _____,
Name of Parent, Guardian or Mature Minor *Name of Counsel*

for the purpose of their work as Counsel appointed in the Counsel for Children Program,
copies of the following records relating to the above-noted pupil:

Student's cumulative record

- OR -

(Note: it is preferable to request specific records if possible)

Attendance records for the following school years: _____

Report cards for the following school years: _____

Discipline reports for the following school years: _____

Reports for the following school years _____

- from: educational psychologist,
 occupational therapist
 speech language pathologist

_____ for the following school years: _____

_____ for the following school years: _____

Signature of Parent, Guardian or Mature Minor

Date

Note: A pupil may be considered a mature minor if the pupil is of sufficient maturity; understands the nature of the consent, and understands the implications of giving the consent, including all the advantages and disadvantages of giving consent. Whether the school division will accept the signature of the pupil as appropriate consent pursuant to s. 49(e) of LAFOIP will be determined by the Director of Education or designate.