School Board Update

Health and Safety Disclosure Obligations: What You Need to Know

Date: December 13, 2018

What information is a school board required to provide to its joint health and safety committee (JHSC)? Following Arbitrator Parmar's decision earlier this year in *Toronto Catholic District School Board* v. *Ontario English Catholic Teachers Association (Grievance re Health and Safety)* (Award), many unions are demanding that school boards provide additional student-related information to the JHSC. Learn more about the decision – and what your organization should consider before complying with these requests – in this *School Board Update*.

General *Occupational Health and Safety Act* (OHSA) Disclosure Obligations

By way of background, under the *Occupational Health and Safety Act* (OHSA), an employer is required to provide the JHSC with the results of any "report respecting occupational health and safety" in its possession and the portions of such report that concern health and safety. In addition, under the workplace violence provisions of the OHSA, an employer is required to assess the risk of workplace violence in the workplace and provide a copy of the assessment to the JHSC. An employer also has a general duty to afford assistance and cooperation to the JHSC in carrying out its functions.

The Arbitration Decision

At issue in the Award was whether or not student risk assessments and student safety plans (also known as Behaviour Safety Plans) were required to be provided to the JHSC pursuant to the OHSA. Arbitrator Parmar found that any portions of such documents relating to an assessment of the specific risk of workplace violence from specific persons, and the specific measures to control such risks, were required to be produced.

After noting that a student risk assessment is used to identify potential sources of harm to both students and adults, and a safety plan outlines measures to control the risks, Arbitrator Parmar found that these documents are "reports concerning occupational health and safety" within the meaning of the OHSA. As a result, she concluded that the portions of these reports that address risk of injury to staff are required to be produced to the JHSC. She further found that in order to satisfy its obligations regarding workplace violence risk assessments, the school board was required to identify the *specific* risk that arises from the *specific* behaviours of a student at a *specific* school, as well as the *specific* measures put in place to control that risk (such as safety plans).

Implications

While it remains to be seen whether other decision-makers will adopt a similar approach in considering this issue, as a result of this decision, many school boards have received requests to provide the JHSC with all student safety plans.

Before responding to such requests, prudent school boards should carefully consider a number of factors, including the following:

- Many student safety plans do not address risks to the health and safety of *workers*
- Many student safety plans which do address risks to the health and safety of workers *also* contain information which is no way related to the health and safety of workers
- In many schools, student safety plans are maintained with a student's Ontario Student Record (or OSR). Consequently, section 266 of the *Education Act* is engaged and parental consent to release such information may be

required
- Student safety plans contain highly sensitive student information, and safeguards need to be put in place in order to ensure the confidentiality of that information or, alternatively, confidential information may need to be redacted.

While the JHSC may be entitled to some of the information contained within these documents, school boards need to carefully consider how to comply with potentially competing statutory and other legal obligations.

To discuss your OHSA compliance obligations and how this may impact your school board, please contact any member of Hicks Morley's School Board Practice Group.

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