

PROCEDURE 197	
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COMMERICAL ELECTRONIC MESSAGES

1) PURPOSE

Hastings and Prince Edward District School Board (HPEDSB) operates under the authority of the *Education Act* and in accordance with all other relevant statutes and regulations of the Province of Ontario and the Government of Canada.

The director of education is responsible for ensuring that all stakeholders are informed of any proposed or enacted legislation that has implications for the school board, and that HPEDSB, its employees and programs comply with all legislated requirements.

This administrative procedure provides awareness about *Canada's Anti-Spam Legislation (CASL)* and describes the actions to be taken to ensure HPEDSB compliance when sending commercial electronic messages (CEMs). This procedure applies to Board members, employees, school councils, third-party service providers and others who may send a commercial electronic message on behalf of a school or the school board.

For the purpose of the procedure the director of education has designated the freedom of information coordinator to act as compliance officer.

2) DEFINITIONS

Canada's Anti-Spam Legislation (CASL): Federal legislation that came into effect July 1, 2014. The purpose of the legislation is to minimize receipt of unsolicited electronic messages, whether in the form of email, text messages, social media or other means of electronic communications that relate to commercial activity. CASL prohibits the sending of commercial electronic messages (CEMs) unless the sender obtains consent from intended recipients first, and includes appropriate identification information and an unsubscribe mechanism in the outgoing message. The legislation provides for limited exemptions regarding commercial electronic messages (CEMs).

Commercial activity: Includes any particular transaction or conduct that is of a commercial nature, whether or not the person who carries it out does so in the expectation of profit. This includes an offer to purchase, sell, barter, or lease products, goods, services or land, and/or an advertisement or promotion of any of those activities.

Commercial electronic message (CEM): An electronic message sent to an electronic address that encourages participation in a commercial activity, including but not limited to offering, advertising or promotion a product, a service or person.

Electronic address: An address used in connection with the transmission of an electronic message to an email, instant messaging account, telephone account, Facebook, LinkedIn, or any similar account. Facebook wall pages, websites, faxes, voicemails and interactive two-way voice communications between individuals are excluded from the definition of electronic address.

Electronic message: A message sent electronically, including email, texting, and other instant messaging.

Exemptions (under CASL): Commercial activities for the purposes of law enforcement, public safety, protection of Canada, the conduct of international affairs, the defense of Canada, soliciting contributions for a political party/organization/candidate, or fundraising by a registered Canadian charity, such as The Hastings and Prince Edward Learning Foundation are exempt from CASL.

3) EXAMPLES OF SCHOOL BOARD COMMERCIAL ELECTRONIC MESSAGES (CEMS)

- a) Messages sent by email, text or other forms of instant messaging that promote, advertise or offer items for sale, whether or not there is an expectation of profit, are considered commercial electronic messages (CEMs). Examples of school board CEMs include:
 - i) email messages to parents/guardians and community members that promote, advertise, or offer items for sale including school pictures, field trips, yearbooks, agendas and books, uniforms, food programs, event tickets or entry fees and fundraising events or items;
 - ii) school newsletters, if sent electronically, that contain messaging about these types of activities;
 - iii) promotion of community and business events when they include promotions or offers for sale;
 - iv) emails that redirect the recipient to another website with commercial content and forwarded emails that contain commercial content;
 - v) messages, e-newsletters and advertisements for general interest courses, business partnerships and requests for proposals; and/or
 - vi) email and text messages regarding non-board business such as an invitation to sponsor a colleague, promote an event or offer an item for sale.
- b) Electronic messages that are simply for informational purposes, such as student progress or notice of a community or school council meeting or asking for volunteers are not considered CEMs.
- c) Hard copy communications such as newsletters, flyers and letters, faxes and voice messages, even if they contain commercial content, are exempt from the legislation.

4) SENDING COMMERCIAL ELECTRONIC MESSAGES (CEMs)

- a) HPEDSB issued email accounts or other electronic HPEDSB addresses should not be used to promote or advertise participation in non-HPEDSB business or personal business activities.
- b) Commercial electronic messages (CEMs) sent to and from HPEDSB issued email accounts or other electronic HPEDSB addresses that relate to the business or activities of the board require approval of the supervisor prior to sending. This is to ensure that the CEM falls within the scope of HPEDSB related business and is CASL compliant.
- c) Commercial electronic messages (CEMs) sent to parents/guardians, adult students, Board members, and educational, business and community partners must be CASL compliant. The sender must ensure that consent is obtained from the recipient before the message is sent, and the outgoing message includes the prescribed identification information and an unsubscribe option, as described in Section 5.
- d) Other methods of communicating commercial activities should be considered where possible. These may include e-news and other forms of electronic subscriptions that are CASL compliant, website postings, twitter, blogs, approved social media, telephone or synervice, community board postings and paper notices.

5) CASL COMPLIANCE

a) Consent

- i) Expressed, written consent must be obtained from the recipient prior to the commercial electronic message (CEM) being sent. The request for consent cannot be sent to an electronic address, such as an email account. The request may be faxed, mailed or hand delivered.

- (1) Parent/guardian and adult student consent is collected annually, by the school where the student is enrolled, through the Student Information Form. Consent will be recorded and retained in the student information management system, and updated annually, or as required.
 - (2) Board members provide consent at the beginning of each elected term. Signed consent forms are retained in the Director's Office.
 - (3) Principals, managers and supervisors will ensure that a CASL compliant process is in place for obtaining consent from community, educational and business partners prior to sending a CEM on behalf of the school or board. Consent forms will be maintained at the site in which they originated.
- ii) Expressed, written consent is valid until revoked by the person who consented. If at any time a person revokes their consent, their email address or other electronic address must be removed from all board and/or school email lists or other electronic address lists maintained for the purposes of sending CEMs. Electronic messages may still be sent concerning non-commercial HPEDSB activities.
 - iii) It is the sender's responsibility to ensure that appropriate consent is in place.

b) Identification information

- i) All commercial electronic messages (CEMs) sent through HPEDSB issued email accounts or other electronic HPEDSB addresses must include the name of the person sending the CEM, the full name and mailing address of the school or board, as appropriate, and a contact phone number and email address of the sender.
- ii) If a message is forwarded on behalf of another person, the person forwarding the message must ensure that the sender's identification information is included in the message before forwarding. Ensure that electronic messages are forwarded as per Section 4, Sending CEMs.
- iii) As a good practice, all outgoing electronic communications sent through HPEDSB issued email accounts and other electronic HPEDSB addresses should include the sender's appropriate identification, or a standard electronic signature card.

c) Unsubscribe mechanism

- i) The sender must include an unsubscribe option in the outgoing commercial electronic message (CEM). The sender must specify in the message that the recipient may unsubscribe to future CEMs at any time by replying to the message. For example, the following statement should be included: "If you wish to no longer receive these messages, please reply to this email indicating unsubscribe."
- ii) The email address or other electronic address to which an unsubscribe request is made must remain functional for at least 60 days after a CEM is sent from that address.
- iii) If an individual chooses to unsubscribe, they must be removed from all electronic mailing lists maintained for the purpose of sending CEMs within 10 days.
- iv) Principals, managers and supervisors should ensure that a designated individual is responsible for maintaining the list of electronic addresses to which CEMs are sent, and that person is notified of any unsubscribe requests or revocation of consent.

5) RESPONSIBILITIES AND COMPLIANCE

- a) All employees and Board members are responsible for fostering a culture of compliance and for self-monitoring compliance. Employees are encouraged to consult with their supervisor concerning compliance with CASL.
- b) Principals, managers and supervisors are responsible to be familiar with this procedure and provide guidance to employees as it relates to their electronic communication with parents/guardians and other stakeholders.
- c) School board contracts and agreements with third-party service providers shall contain appropriate warranties and representations requiring the third-party to comply with CASL.
- d) The compliance officer, on behalf of the director of education, will:
 - i) monitor any legislative or regulatory changes and modify or update related procedures accordingly;
 - ii) receive, respond to, and resolve complaints within a reasonable period of time;
 - iii) provide guidance and assistance to employees as required; and
 - iv) monitor adherence to CASL.
- f) Concerns or complaints received by employees from parents or the public regarding the receipt of commercial electronic messages sent by HPEDSB employees, Board members or school councils may be directed to the compliance officer.
- g) Anyone who receives a complaint regarding compliance with CASL or this procedure, or becomes aware of a violation of them shall, as soon as reasonably possible, report the nature of the complaint or violation or refer the complainant to the CASL compliance officer.
- h) Where the use of a commercial electronic message (CEM) is deemed to be in contravention of the legislation, the compliance officer will contact the sender and/or their supervisor, as appropriate, regarding the proper use of the CEM.
- i) Records relating to CASL will be maintained in accordance with this procedure and the board's records retention schedule. Records include:
 - i) evidence of expressed consent;
 - ii) records identifying potential non-compliance issues;
 - iii) investigations and responses to complaints; and
 - iv) questions, responses and audits relating to commercial electronic messages.
- j) The penalties for violating CASL are significant for both an individual and HPEDSB.
- k) The director of education has the authority to consent to commercial electronic messages sent to and from employees in certain circumstances. Commercial electronic messages sent on behalf of the director of education will align with board policies and procedures and support the Board strategic plan.

Legal references

- *Canada's Anti-Spam Legislation*
- *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*

District references

- Administrative Procedure 190: Monitoring and Responding to Legislation
- Administrative Procedure 194: Freedom of Information and Protection of Privacy
- Administrative Procedure 196: Records and Information Management
- Administrative Procedure 225: Character Development

Resources

- fightspam.gc.ca



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CASL DECISION TREE

Sending CEMs Using HPEDSB Email and other HPEDSB Electronic Addresses

