

Confidentiality Guidelines For School Counselors

One of the main ethical considerations for school counselors is where to draw the line regarding confidentiality. How do we maintain student confidentiality, but still do what we can to keep students safe and parents informed? How do laws and ethics co-exist? Here are some basic questions and answers about confidentiality for school counselors.

1. What exactly is confidentiality, and how is it different from legal privilege?

I like the definition given in a 2002 article in the Journal of Professional School Counseling:

“Confidentiality is a professional’s promise or contract to respect clients’ privacy by not disclosing anything revealed during counseling, except under agreed upon conditions.”

Legal privilege is different. While confidentiality in school counseling is an ethical term, legal privilege is (obviously) a legal term. Whenever there’s a struggle between ethics and the law, the law always prevails. Legal privilege is given to attorneys, doctors, and licensed professional counselors, among others. But in many states, school counselors are **certified** rather than **licensed**, so legal privilege doesn’t apply.

2. Does that mean there’s really no such thing as confidentiality for minor students? How does confidentiality differ for minors, parents of minors, and adults in general?

There is still such a thing as confidentiality for minors, but there are certain legal exceptions that must be considered. For instance, when it comes to informed consent (such as consent for the student to see the school counselor, or consent for a student to join a school support group), FERPA laws say that until a student is 18, the parents have the right to give or deny consent.

3. So a school counselor can’t see a minor student without parental consent?

A parent can specifically forbid a minor student to see the school counselor, or specifically forbid the counselor to work with a minor student. But as long as the parent hasn’t stated that specifically, school counseling is considered a regular educational service provided by the school, so legally the counselor can see a minor student without parent consent.

The article mentioned earlier says: *“The legal concept of the age of majority has implications for minor clients’ rights to make choices about entering into counseling as well as their rights to privacy and confidentiality. Overall, **although minor clients have ‘an ethical right to privacy and confidentiality in the counseling relationship ... [the] privacy rights of minors legally***

belong to their parents or guardians' (Remley & Herlihy, 2001, p. 184).

“Isaacs and Stone (1999) noted that the Supreme Court has upheld parents' legal right to make critical decisions about their children. (The term parents refers to all who function in the parental role and have the legal rights of parents.) Many people consider the decision to enter into counseling to be an example of a critical decision. Further, because counseling is considered to be a contractual relationship, "minors cannot legally agree to be counseled on their own" (Remley & Herlihy, p. 179).”

However, the same article goes on to say: *“Informed consent is both a legal and ethical principle requiring school counselors to adequately disclose to clients potential risks, benefits, and alternatives to proposed counseling. Minor clients, however, cannot legally give informed consent, only their parents can. **Although the majority of clients served by school counselors cannot legally give informed consent, they can assent to counseling without parental consent.***

*“Some school districts or school principals have policies that require counselors to obtain parents' permission before beginning counseling students, and others require counselors to seek permission if they see students for more than a specified number of counseling sessions (e.g., two or three). **Unless there is school policy or a state or federal law to the contrary, Remley and Herlihy (2001) asserted that school counselors do not need parental permission before they provide counseling to students.**”*

4. Who is actually the school counselor’s “client?” The minor student, or the parents?

Even with the legal issues involved, from an ethical standpoint, ***the school counselor’s client is the student.*** This is one of the first things discussed in the Ethical Standards for School Counselors (2004). The parents’ needs are considered, but the needs of the students come first, above all others.

Here’s another excerpt from the same JPSC article: *“In attempting to weigh their legal and ethical obligations, it is helpful for school counselors to clearly identify those they consider to be "clients." School counselors are part of an educational community. As such, they consult with teachers, administrators, and parents. **It is important for school counselors to clarify that their consultation is on behalf of students and that only the students are their clients (except if school counselors offer counseling to students' families).**”*

5. What are the limits of confidentiality for school counselors?

Ethically, school counselors are required to **“take appropriate action if students engage in behavior that presents clear and imminent danger to themselves and others.”** The term “clear and imminent danger,” or even the word “danger” itself, can be vague. Typically, school

counselors are required to call a parent or guardian if a student plans to or has already self-injured (cutting, burning, suicide attempt, etc.), indicates an eating disorder, possible drug or alcohol addiction, runaway plan, or other dangerous behavior. If a student's behavior is a threat to others, the matter is usually turned over to the administration, who then contact the parents.

A school district may or may not specify what constitutes clear and imminent danger. There is also consideration given to the age and maturity level of the student. In most school districts, a six-year-old who drank a beer over the weekend and a 17-year-old who drank a beer over the weekend will not require the same response from a school counselor.

Many school counselors call home when they believe that a student's **health or safety is at risk**, whether the issue falls into the category of "imminent danger" or not. If this is your policy, state it up front (see samples of written confidentiality policies later in this article). That way, students and parents will know what to expect.

School counselors are also required to report **known or suspected child abuse or neglect**. In Arizona, all school personnel are mandatory reporters to Child Protective Services. ***CPS now requires the first adult who heard the information to make the report***, although a school counselor or someone else on campus may still be designated as the CPS liaison.

The other situation where a school counselor may have to reveal information about a student is during **legal proceedings, in response to a subpoena**. It's rare for school counselors to be subpoenaed, but it does happen. There are ways to prepare yourself for a court appearance so you can adhere to the laws, but still share only minimal information. See related articles on the www.school-counseling-zone.com site for more information about making CPS reports and preparing to testify as a school counselor.

If you do have to reveal information, either to parents, school officials, police, CPS, in court, or in some other situation where the student is in imminent danger, it's important to **reveal only essential information**. While the law may require you to reveal information, the ethical standards require you to reveal as little as possible, only what is directly needed in the situation. It's a fine line to walk, but the less you reveal, the more you salvage your trust and rapport with the student.

6. How can I be proactive and prevent problems with confidentiality?

The best way to prevent problems is to provide the student and the parents with information about confidentiality before the school year begins, and keep the information visible and available at all times. I would recommend the following:

– First, include a statement in the student handbook about school counseling services and

confidentiality. If possible, include a form that students and parents must sign and return at the beginning of the school year (or when they register) that says they have read and understood the handbook and all information contained in it.

– Second, post flyers in the counseling office and in your individual office about confidentiality and the exceptions.

– Third, post the confidentiality guidelines and limitations on the school website, and on the guidance page or your own personal page of the site.

– Fourth, when you first meet a student for anything other than scheduling issues, explain confidentiality guidelines and exceptions and have the student sign and date a form indicating that he/she has been informed and understands the limits of confidentiality (see examples below). Keep the signed form in the student's file, or in a separate file just for these forms.

While this may sound like overkill, a little prevention can make a big difference.

7. How do I prepare a student if I need to reveal information?

When you do encounter a situation where you need to notify a parent, CPS, your administrator, or someone else, here are some suggestions, and things to keep in mind:

– If you feel it necessary to share confidential information, let the student know ahead of time that you plan to do it, and what you plan to say.

– Sometimes it's easier than you think it will be. If the issue is something borderline, meaning that you may need to call a parent, but you aren't sure yet, ask the student, "Do you mind if I talk with one of your parents about that?" Sometimes students don't mind at all, and will say, "Go ahead – it's fine with me." Let the student know specifically what you'd like to share, and why. Document the student's verbal permission, and then go ahead and make the call.

– Assure parents from the beginning, whether in writing or directly, that you will let them know if their students are in harm's way. Most often, that's what parents really want to know.

– If you need to reveal information to parents, encourage the student to make the call from your office (you dial, and be sure you're actually talking with the parent, then hand the phone over to the student or put the call on speaker phone), to be present for the call, or to meet with you and the parents together.

– If you need to call CPS or the police, invite the student to stay with you while you make the call, so the student knows exactly what has been said.

– If you’re not sure whether to call CPS or not, call them. You can always say, “I’m not sure whether this is a report or not. Can I tell you what happened?” Their job is to say yes to that, and they can determine whether it’s a valid report or not. Document your call either way.

– If you’re still unsure about what to do, consult, consult, and consult. Then take the action you think is best, and document everything, including your consultation conversations and conversations with parents.

8. What does a school counseling confidentiality policy look like?

On the following pages, here are samples of:

– A confidentiality signature sheet you could have students sign when they meet you individually for the first time, or a statement that could be put into a student handbook, or on the guidance web page for your school (minus the signature lines on the web page).

– A flyer you could post in your office (preferably in more than one place) to remind students about confidentiality guidelines and exceptions.

Confidentiality Guidelines

Your confidentiality as a student is important to us! In our school counseling office, what is said here, stays here, with the following exceptions, as required by law and/or ethical standards:

1. Harm to self or others

This could include things like a suicide attempt or plan, cutting or other self-injury, eating disorders, addictions, fighting or other physical violence, illegal behaviors, threats, etc. -- anything that puts your health or safety, or someone else's health and safety, at risk.

2. Abuse or neglect

If you talk with one of us about abuse (physical, emotional, verbal, sexual, or other abuse), whether to yourself or to another minor, we are required by law to report it to Child Protective Services, and possibly the police. If you tell us about an abuse case that's already been addressed by CPS or the police, we still may need to make a call to double check.

3. Court or other legal proceedings

By law, if we are subpoenaed (required by law to attend a hearing or other court proceeding), we cannot guarantee that your information will be kept confidential. We will always do our best to reveal as little as possible in a legal setting, but we must cooperate with the police, CPS, and the courts.

If there is ever a need to reveal information, we will let you know in advance, and work with you to handle the situation in a way that respects you, your feelings, and your needs.

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I have read and I understand the guidance department's confidentiality guidelines and exceptions.

_____ Student Signature	_____ Date
_____ Parent/Guardian Signature, if applicable	_____ Date

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