
School Counseling Records

Wendy's Wheelhouse – A Word to the Wise

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“... their primary ethical obligation for confidentiality is to the students but balance that obligation with an understanding of parents’ guardians’ legal and inherent rights to be the guiding voice in their children’s lives.”

Counseling Conundrum – A Challenge Facing School Counselors

In accordance with the [American School Counselor Association \(ASCA\) Professional Standards and Competencies](#) (the national [model supported by OSPI](#) as best practice), all school counselors are to adhere to “the legal and ethical principles of the school counseling professional.” In doing so, school counselors are to “practice within the ethical principles of the school counseling profession” and “adhere to the ethical and statutory limits of confidentiality” in accordance with the [ASCA Ethical Standards](#) for School Counselors. At the same time, school counselors must also “fulfill legal and ethical obligations to families, teachers, administrators and other school staff.” In keeping with the ASCA standards, school counseling services are generally considered confidential services provided to students. Per the ASCA ethical standards of confidentiality, among other things, school counselors:

“Recognize their primary ethical obligation for confidentiality is to the students but balance that obligation with an understanding of parents’/guardians’ legal and inherent rights to be the guiding voice in their children’s lives. School counselors understand the need to balance students’ ethical rights to make choices, their capacity to give consent or assent, and parental or familial legal rights and responsibilities to make decisions on their child’s behalf.”

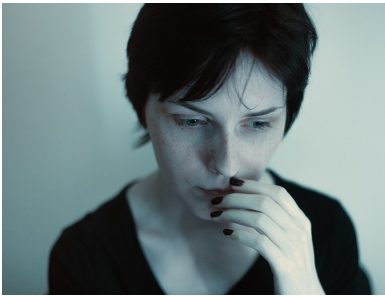
However, upholding these obligations to both students and parents can be challenging, and [understanding what to share](#) and with whom to share it can be especially difficult to work through, particularly when a request is made for a counselor’s records.

Requests for Records – Queries and Questions

Let me start by saying, don’t panic! We will work through this together. Nearly every time I place a call to a school counselor to let them know that a request for their records has been received, I’m generally met with silence on the other end while they start to process that information. Following the initial reaction, school counselors pose a range of questions related to the records request: How can I maintain [student confidentiality](#) if a parent is requesting my records about their student? Can I simply refuse to produce my records? Should I stop taking notes? What if I mark my records confidential? What if I think that my personal safety or that of my student will be jeopardized by the release of records? Is there anything I can do to prevent these types of quandaries in the future?

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School Counseling Records cont'd



Requests for Records – Queries and Questions cont'd

School counselors are first and foremost human beings, and like any other staff member, they may experience anxiety, fear, or a myriad of other emotions when their notes and other records are requested. Due to the sensitive nature and subject matter inherent in certain counseling records, these emotions may be elevated even further if a counselor believes that the release of such records would cause harm to the student or jeopardize their own personal safety.

Creating Clarity – Calm the Confusion

It is my aim to create clarity and calm the confusion around counseling records by providing facts and information that answer some of the most common questions asked by our school counselors, and to increase awareness and knowledge of records processes that may serve to inspire the creation or refinement of your own current practices to best meet your needs. Thus, this article will focus on the types of counseling records that may exist, what distinguishes a student record from a public record and the laws that govern those records, the disclosure of records and the relevance of a requestor to those records, exemptions that may limit or prohibit the disclosure of records, and finally, some special considerations to reflect on moving forward. To begin, we need to understand the different types of records that exist and determine if they are student records or public records. So, let's get started.

Counseling Records – A Compelling Collection

The [role of a school counselor](#) is multi-faceted, and therefore, the types of records that may exist for school counselors are equally varied. Some records that may be in the possession of a school counselor could be, but are not limited to:

- Child Protective Services (CPS) records
- Student academic plans and goals or interventions
- Classroom lessons
- Referrals and discipline records
- Student/witness statements and incident reports
- Records provided by students (writings, images, screen shots, video clips etc.)
- Student no contact contracts
- Data used to identify student issues
- Notes, records, logs of sessions with students
- Calendars, appointments, task lists
- Emails, text messages, other communications
- Notes, records, agendas, minutes for staff meetings, advisory groups, etc.?
- Notes, records, phone messages, logs of contact with parents/guardians

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School Counseling Records cont'd



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Distinguishing Student Records from Public Records – Let the Laws that Govern Guide You

School district records are subject to multiple, and sometimes overlapping laws, including the [Family Educational Rights and Privacy Act](#) (FERPA) and the [Public Records Act](#) (PRA).

FERPA is a federal statute applicable to student education records, which are broadly defined as any records that are directly related to a student that are maintained by an agency (the district). ***FERPA is considered a privacy statute***, meaning that student education records are private and generally are not disclosable without parental/student consent. ***The focus is on protection of student education records and/or the information contained therein and FERPA defines when disclosure is permissible with or without parent or student consent.***

The PRA is a state statute applicable to all district records, which are defined as any record containing information about school district business that is prepared, owned, used, or retained by the district regardless of the type of record it may be. In contrast to FERPA, the ***PRA is considered a disclosure statute***, meaning that all district records are generally disclosable to the public unless a specific exemption applies to limit or prohibit their disclosure. ***The focus is on disclosure of district records and the PRA defines when exemption from disclosure is permissible.***

With this knowledge, you can determine which of your records are student records and which are public records.

Some records may be the educational records of more than one student, and some records can be both a student record and/or a public record, so if you ever have questions about whether a particular record is a student record or not, do not hesitate to reach out to me so that I can consult with you.

Disclosure of Records – Relevance of the Requestor

Parental Requests for Records Pertaining to Their Own Students

All educational records requested by a parent or legal guardian for their own student are student records requests and will be fulfilled in accordance with FERPA regulations.

All other records requested by a parent or legal guardian that pertain to, relate to, or are about their own student are public records requests and will be fulfilled in accordance with the PRA regulations.

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School Counseling Records cont'd



“It’s important to note that this exception cannot be used to withhold counseling records from parents simply because they are records in the sole possession of the counselor and are not shared or revealed to any other person . . .”

Disclosure of Records – Relevance of the Requestor cont'd

Parental Requests for Records Pertaining to Other Students

All educational records requested by a parent or legal guardian for students of whom they are not the parent/guardian and for whom they do not have a release of information signed by that student’s parents authorizing the district to release such records to the requestor, are exempt from public disclosure under FERPA regulations and will be processed as a public records request in accordance with PRA regulations.

All other records requested by a parent that pertain to, relate to, or are about other students of whom they are not the parent will be processed as a public records request in accordance with PRA regulations.

Public Records Requests for Records

With a few exceptions, virtually all records requested by a non-parent are public records requests and will be processed as a public records request in accordance with PRA regulations.

Why does this matter? Let’s say a requestor asks for “any and all counseling records pertaining to or related in any way to my student, Jane Doe.” This tells me that the requestor is a parent of Jane Doe (which we would first verify), and that they are seeking all counseling records pertaining to Jane Doe, regardless of whether those records are student records or public records. As the parent of Jane, any counseling records that may be an education record of Jane (such as notes taken by the counselor in sessions with Jane) can be released to the parent in accordance with FERPA. Any counseling records that are public records that pertain in any way to Jane (such as emails or counseling logs) would be provided in accordance with the PRA. Both FERPA and the PRA have unique timelines and regulations with which the district must comply when responding to requests for records.

Exceptions to FERPA – Records Excluded from Student Education Records

There are a few [exceptions to FERPA](#), but an important one is often referred to as the “sole possession” exception. FERPA does not require the disclosure of “records that are in the sole possession of the maker of the records, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the records.” This exception is often misconstrued and mistakenly interpreted as an exemption of any records that are not shared or revealed to any other person except a substitute for the maker of the records. It’s important to note that this exception cannot be used to withhold counseling records from parents *simply because* they are records in the sole possession of the counselor and are not shared or revealed to any other person except a substitute for the maker of the records.

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School Counseling Records cont'd



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Exceptions to FERPA – Records Excluded from Student Education Records cont'd

The U.S. Department of Education's [Student Privacy Policy Office](#) (SPPO), which is responsible for compliance with FERPA regulations, has provided clear [sole possession guidance](#) that “FERPA's sole possession exception is strictly construed by this Office to mean ‘memory-jogger’ type information that a school official may use as a reference tool to record his or her thoughts or observations. Such records are generally kept by the school official unbeknownst to other individuals.”

Withholding Records – When Exemptions May Limit or Prohibit Disclosure

While FERPA may allow the exclusion of notes of counselors kept in their sole possession as a memory aid, FERPA does not govern the district's obligations to respond to a public records request for those same records.

So, are counseling records exempt from disclosure under the PRA? The short answer is, it depends. Because potential exemptions depend on how the records are maintained, the public records office will engage in a conversation with the counselor maintaining the records to determine if an exemption can be claimed. Regardless, we will need to collect any records to create an exemption log. We are required by law to provide the requestor with a log that indicates a document or documents exist that we are not providing, including who created it, when it was created, the general type or topic of the document, the date, the number of pages, and the legal reason we believe it is exempt from disclosure.

Moving Forward – Special Considerations to Reflect On

How can I maintain student confidentiality if a parent is requesting my records about their student?

Counseling records that are directly related to a student that are maintained by the district are student educational records and generally must be disclosed to a parent that requests them. Please adhere to the ASCA Ethical Standards and consult with your supervisor when seeking guidance in matters such as these. Our office is also a resource for any type of records request you receive.

Can I simply refuse to produce my records?

No, you cannot refuse to produce records unless there is a specific exemption allowing such refusal. All staff must adhere to federal and state statutes, as well as all district policies and procedures pertaining to records management, records retention, public records requests, and student records requests. If you feel there is reason to refuse to produce your records, please contact me to discuss your concerns.

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School Counseling Records cont'd



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Moving Forward – Special Considerations to Reflect On cont'd

Should I stop taking notes?

In the January/February 2008 issue of the ASCA Magazine, the article [Case Notes and Guardian Rights](#) states, “In the age of accountability and litigation, it is wise to keep case notes, at least for the situations that seem above and beyond the scenarios school counselors typically encounter. Due to time and caseload numbers, most school counselors can’t keep written notes on every child or situation they see on any given day. However, in some cases it’s prudent to document everything you have done to assist in a situation. **When documenting any cases, it is advisable to write the notes as if they were going to be read in court.**”

What if I mark my records confidential?

Just because a record is marked “confidential” does not mean that it is not subject to disclosure under FERPA or the PRA. If you receive a request for documents that have been marked as confidential, please contact our office for further guidance.

What if I think that my personal safety or that of my student will be jeopardized by the release of records?

School counselors have an ethical obligation to prevent [serious and foreseeable harm](#) to students and others. Serious and foreseeable harm is different in each situation and is determined by a student’s developmental and chronological age, the setting, parental/guardian rights, and the nature of the harm. If your counseling records are student educational records, then FERPA requires you to disclose your records to the parent in accordance with FERPA regulations. If a counselor believes that information in their records, if disclosed to the parents, would cause serious and foreseeable harm to the student, please refer to the ASCA Ethical Standards for guidance. Consult with your supervisor or other appropriate professional when in doubt as to the validity of an exception.

Is there anything I can do to prevent these types of quandaries in the future?

Yes! Refine or create a records process that will best meet your needs. Work with your colleagues to create a uniform system and response process. Reach out to our office for training in person or via Zoom or ask your supervisor to invite us to speak at a team meeting.

If you have any questions about the information provided in this article, please feel free to reach out to me for a discussion. You can reach me, Wendy Snider, at wsnider@everettsd.org or ext. 4188.

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