

The School Counselor and Confidentiality

(Adopted 1974; reviewed and reaffirmed 1980; revised 1986, 1993, 1999, 2002, 2008, 2014, 2018)

ASCA Position

School counselors recognize their primary obligation regarding confidentiality is to the student but balance that obligation with an understanding of the family or guardians' legal and inherent rights to be the guiding voice in their children's lives (ASCA, 2016).

The Rationale

ASCA and its members affirm their belief in the student's right to be treated with respect and dignity (ASCA, 2022). It is the school counselors' responsibility to fully respect the right to privacy of those with whom they enter a counseling relationship and to provide an atmosphere of trust and confidence (Lazovsky, 2008; ASCA, 2022).

A school counselor, who is in a counseling relationship with a student, has an ethical and legal obligation to keep information contained within that relationship. Confidentiality is the ethical and legal term ascribed to the information communicated within the counseling relationship, and it must be maintained unless keeping that information confidential leads to foreseeable harm. "Serious and foreseeable harm is different for each minor in the school setting and is determined by students' developmental and chronological age, the setting, parental rights and the nature of harm" (ASCA, 2022).

Exceptions to confidentiality exist, and students should be informed when situations arise in which school counselors have a responsibility to disclose information obtained in counseling relationships to others to protect students, themselves or other individuals. Privileged communication between a school counselor and a student is a legal term granting protection to information shared in a counseling relationship only if said privilege is granted by federal or state statute. If privilege applies it can provide additional safeguards to confidential information.

The School Counselor's Role

The role of the school counselor regarding confidentiality is:

- To support the students' right to privacy and protect confidential information received from students, the family, guardians and staff members
- To explain the meaning and limits of confidentiality to students in developmentally appropriate terms
- To provide appropriate disclosure and informed consent regarding the counseling relationship and confidentiality
- To inform students and the family of the limits to confidentiality when:
 - the student poses a danger to self or others
 - there is a court-ordered disclosure
- consulting with other professionals, such as colleagues, supervisors, treatment teams and other support personnel, in support of the student
- privileged communication is not granted by state laws and local guidelines (e.g., school board policies)
- the student participates in group counseling
- substance use and treatment are concerns (CFR 42, Part 2; 2017)
- To keep personal notes separate from educational records and not disclose their contents except when privacy exceptions exist
- To seek guidance from supervisors and appropriate legal advice when their records are subpoenaed
- To communicate highly sensitive student information via face-to-face contact or phone call and not by e-mail or inserting into the educational record
- To request to a court of law that a student's anonymity be used if records are subpoenaed
- To be aware of federal, state and local security standards related to electronic communication, software programs and stored data
- To advocate for security-level protocols within student information systems allowing only certain staff members access to confidential information
- To assert their belief that information shared by students is confidential and should not be revealed without the student's consent
- To adhere to all school board policy and federal and state laws protecting student records, health information and special services (i.e., HIPAA, FERPA, IDEA)

Summary

The counseling relationship between students and their school counselor requires an atmosphere of trust and confidence. Students must trust the school counselor to be able to enter into a meaningful and honest dialogue with the school counselor (Iyer & Baxter-MacGregor, 2010). However, students should be informed that exceptions to confidentiality exist in which school counselors must inform others of information they obtained in the counseling relationship to prevent serious and foreseeable harm to students themselves or others and if it is legally required.

References

American School Counselor Association. (2022). *Ethical standards for school counselors*. Alexandria, VA: Author.

Iyer, N. N., & Baxter-MacGregor, J. (2010). Ethical dilemmas for the school counselor: Balancing student confidentiality and parents' right to know. NERA Conference Proceedings 2010. Paper 15. Retrieved from https://opencommons.uconn.edu/nera_2010/15/?utm_source=digitalcommons.uconn.edu%2Fnera_2010%2F15&utm

Lazovsky, R. (2008). Maintaining confidentiality with minors: Dilemmas of school counselors. *Professional School Counseling*, 11, 335-346.

Resources

Akos, P., & Pizzolato, S. (2017). Defining the school counseling relationship: Confidentiality revisited. *Journal of Ethics in Mental Health*, 10, 1-1.

Cottone, R. R., & Tarvydas, V. M. (2016). *Ethics and Decision Making in Counseling and Psychotherapy*, 4th edition. New York: Springer Publishing Company.

Hicks, J. F., Noble, N., Berry, S., Talbert, S., Crews, C., Li, J., & Castillo, Y. (2014). An ethics challenge for school counselors: Part 2. *Journal of School Counseling*, 12(1). Retrieved from: <https://eric.ed.gov/?id=EJ1034758>.<https://eric.ed.gov/?id=EJ1034758>.

Linde, L. E., & Erford, B. T. (2016). Ethical and legal foundations of group work in schools. In B. T. Erford (Eds.), *Group work in schools* (pp. 28-42). New York, NY, US: Routledge/Taylor & Francis Group.

Remley, T. P., Jr., & Herlihy, B. (2013). *Ethical, legal and professional issues in counseling* (4th ed.). Upper Saddle River, NJ: Prentice Hall.

Trice-Black, S., Riechel, M. K., & Shillingford, M. A. (2013). School counselors' constructions of student confidentiality. *Journal of School Counseling*, 11(12). Retrieved from: <https://eric.ed.gov/?id=EJ1034752>

Online Resources

Confidentiality of Substance Use Disorder Patient Records, Rule CFR 42, Part 2 (2017). Retrieved from <https://www.gpo.gov/fdsys/pkg/CFR-2017-title42-vol1/xml/CFR-2017-title42-vol1-part2.xml>

U.S. Department of Education. (2017). Individuals with Disabilities Act. Retrieved from <https://sites.ed.gov/idea/>

U.S. Department of Education Family Policy Compliance Office. (2015). Family Educational Rights and Privacy Act (FERPA). Retrieved from <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

U.S. Department of Health and Human Services (2017). Your rights under HIPAA. Retrieved from <https://www.hhs.gov/hipaa/for-individuals/guidance-materials-for-consumers/index.html>

*Note this position statement includes minor updates to reflect the revisions to the 2022 ASCA Ethical Standards for School Counselors.