

Serious and Foreseeable Harm or Clear, Imminent Danger

AUTHOR(S):Carolyn Stone, Ed.D.

March 1, 2011

You are working with a student who you suspect might be anorexic, and many factors are causing her to spiral downward, including a recent breakup with her boyfriend who dumped her and put cruel postings about her weight on Facebook, knowing this is her Achilles heel. Her friends say these posts are causing her tremendous anxiety, and they are worried about her. This young woman appears dangerously underweight and is, in your professional judgment, in trouble. She seems to be changing right before your eyes. You wish you could reach out to her parents, but in your view this student's situation does not meet the threshold of clear, imminent danger; therefore, you feel your hands are tied. You have always operated under the belief that unless a suicide is about to happen (a clear imminent danger) you would not breach confidentiality. You have never defined any circumstance except suicide as triggering a breach under the clear imminent danger test.

In a recent workshop, as audience participants wrestled with cases involving the central question of whether or not to breach confidentiality, a school counselor said, "I always thought the only time you breached would be for a potential suicide." This school counselor was treating breach of confidentiality as that of an uplifted knife. In clear, imminent danger the test for breach is the proverbial "knife" and whether or not it is poised six inches from the heart. The revised 2010 American School Counselor Association Ethical Standards for School Counselors eliminated all references to clear, imminent danger and replaced this language with serious and foreseeable harm.

What is clear, imminent danger for a minor who is in a setting designed for academic instruction and in most cases is mandated to be there? Webster defines "imminent" as about to happen, looming. Is clear, imminent danger a 7 year old smoking cigarettes? A 17 year old smoking cigarettes? If you substitute the concept of serious and foreseeable harm for clear, imminent danger does this help you make the decision as to whether or not you notify the 7 year old's parents or the 17 year old's parents?

Serious and foreseeable harm also describes a concept used in negligence (tort) law to limit the liability of a party to those acts carrying a risk of foreseeable harm, meaning a reasonable person would be able to predict or expect the ultimately harmful result of their actions. The legal and ethical complications of any human service profession are daunting, but on any given day a school counselor puts into play the "reasonable person" approach and navigates such charged, delicate subjects as abortion, harassment and suicide. School counselors exercise professional judgment when a reasonable person would know a student has reached the limits of being able to negotiate a situation in isolation of parental involvement.

Serious and foreseeable harm is a more appropriate concept for this school counselor, who has a student who needs support and in a suspected downward spiral, triggering the eating disorder into an even more dangerous zone. No, we cannot say with conclusiveness that this is clear, imminent danger and that this student is going to succumb to this disorder today. However, can we say that the "reasonable person" will consult, seek supervision, work with this student to get her to involve

her parents and, if needed, make the decision that the serious and foreseeable harm of this situation outweighs protecting confidentiality?

We owe our students a trusting relationship. Without question, we cannot step all over this crucial hallmark of our profession. The ASCA Ethical Standards emphasize that school counselors have a primary obligation and loyalty to students; yet, our ethics honor and recognize that we also have an obligation to parents primarily because our setting dictates responsibility beyond the minor student standing in front of us. School counselors balance the rights of minors with the rights of their parents. It is a daily struggle knowing when to invoke confidentiality at the expense of a parent's right to know and when it is time to involve parents so they can intervene on behalf of their child.

Our confidentiality struggle is ethical but also legal. Parents are continually vested by our courts with legal rights to guide their children (Bellotti vs. Baird, 1979; H.L. vs. Matheson, 1981). In H.L. vs. Matheson, the U.S. Supreme Court said, "Constitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society." The Supreme Court emphasized that there are three reasons parents are the guiding voice in their children's lives:

1. The peculiar vulnerability of minors to make life-altering decisions
2. A minor's inability to make informed, competent decisions, particularly under emotional stress
3. The unique nature of the parent-child relationship that makes parents responsible for their children's development of values and skills necessary for adulthood

The school counselor in our case study is in a unique and powerful position that allowed entry into this student's sensitive, vulnerable world. This school counselor will work fervently to provide a safe, secure environment for this student in which the student's trust in the school counselor is established and maintained. Without the assurance of confidentiality, she may not have sought help. However, this school counselor will also work overtime to get this child to involve her parents and, if that fails, is in the difficult position of looking to serious and foreseeable harm as the guide and standard to next steps. It is not about clear, imminent danger.

Carolyn Stone, Ed.D., is co-chair of the ASCA Ethics Committee and a professor at the University of North Florida. She can be reached at cstone@unf.edu.

If you have questions for the Legal/Ethical column, please send them to ethics@schoolcounselor.org.