
The COMPLICATIONS of Working with Minors in a School Setting

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The COMPLICATIONS of Working with Minors in a School Setting (Stone, 2005; 2010; 2013)

COUNSELOR'S VALUES

We are our values. We are not able to leave our values at the school house door. However, professional schools counselors are aware of those value-laden issues for which they cannot be objective (our hot buttons) and we avoid working with students who are in the throes of a situation involving our hot buttons. For example, if a school counselor is vehemently opposed to abortion, then s/he recognizes this and refers a student who is seeking help on this topic to another professional. It is unethical for us to impose our values on our students in value-laden controversial topics. Our ethical imperative guides us to promote the autonomy and independence of our students.

Grossman v. Southshore Community School District

OBLIGATIONS BEYOND THE STUDENT

We owe our students a trusting relationship. The ASCA Ethical Standards dictate that school counselors have a primary obligation and loyalty to students. Yet, we also have an obligation to parents, teachers, administrators, the school district, and the community. School counselors respect students' confidences and balance the rights of minors with the rights of their parents. The ambiguity of protecting students' trust in their school counselor and promoting students' autonomy while respecting parental rights to be the guiding voice in their children's lives is a daily struggle. Parents are continually vested by our courts with legal rights to guide their children (*Bellotti v. Baird*, 1979; *H. L. v. Matheson*, 1981).

In *H. L. V. Matheson*, The Supreme Court Of The United States 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 why parents are the guiding voice in their children's live:

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; and,
3. The concept that parents are the guiding voice in their child's life.

Bellotti v. Baird

We have recognized that parents have an important "guiding role" to play in the upbringing of their children, *Bellotti II, supra*, at 633-639, which presumptively includes counseling them on important decisions.

MINORS' DEVELOPMENTAL AND CHRONOLOGICAL LEVELS

The competency and developmental levels of minors cannot be attached neatly to a chronological age. For example, middle schoolers may present themselves developmentally as a mature 13 year old only to surprise us with behavior typical of a nine-year-old the next day. School counselors' sensitivity to the unique and holistic picture of each student is an important consideration when dealing with the ambiguities of legal and ethical issues.

Clear Imminent Danger or Reasonable and Foreseeable Harm

PRIVACY RIGHTS

The privacy rights of minors belong to the student's parents/guardians.

Family Education Rights and Privacy Act (FERPA, 1984) and the Health Insurance Portability and Accountability Act (HIPAA, 2000), two federal statutes provide guidance. It is the parent and not the student who makes critical decisions about disclosure of personal information. Parents have the final word in who will know about certain of their child's medical conditions such as HIV+ status. Unless an entity is covered by FERPA such as a receiving school, it is parent and not the student who must give permission to release educational records.

LEGAL STATUS OF MINORS

The legal status of minors is difficult to define. A minor is generally defined as someone under the age of 18. All minors share the legal characteristic that they are unable to make decisions on their own behalf. Minors are a group of individuals with complicated legal status that maintains a dependency on adults for privilege and access to resources.

IN LOCO PARENTIS

Another complication of working with minors in a school setting is the interpretation of the common-law doctrine *in loco parentis*, which at times, allows school personnel to act in place of the parent. Common-law thinking on this issue has prevailed for many years. The Wisconsin Supreme Court recognized that educators must be able to address the diversity of expectations placed upon them and have sufficient control over the decorum and climate of the school to ensure that learning can take place (State ex rel. Burpee v. Burton, 45 Wis. 150, 30 Am. Rep. 706 (1878)). Inherent in this thinking is the necessity that educators, by virtue of their positions, have the authority to govern school in a reasonable and humane manner (Edwards, 1955). General education and control of pupils who attend public schools are in the hands of school boards, superintendents, principals, and teachers and [school counselors]. This control extends to health, proper surroundings, necessary discipline, promotion of morality, and other wholesome influences, while parental authority is temporarily superseded (Richardson v. Braham, 125 Neb 142, 249 N.W. 557 (1933)). Educators have an ethical obligation to promote harmony in the school while simultaneously advancing and protecting students' interests.

Eisel v Montgomery County BOE

COMMUNITY AND INSTITUTIONAL STANDARDS

As difficult as it is to accept, ethical are situational. Your ethical behavior is determined in large part by where your school is located. This flies in the face of the school counselor as advocate and purveyor of justice. However, the prevailing community and institutional standard do dictate to a large degree what school counselors can do and remain ethical.

We cry out, “the support we give students should not depend on the values of the community!” We fight against the notion of treating students differently based on their zip code. As much as it might pain us, we have to know and be respectful of the wishes of the community in which we take a position. In some communities the school counselor could direct a student to a health clinic for contraceptives or could recruit for a support groups for gay/lesbian/bisexual/transgender (g/l/b/t) students. Whereas, in other areas of the country these activities would be a breach of ethics and cross the line against the community and/or institutional standards.

School counselors as leaders and advocates behave as change agents when the community and institutions’ standards of behavior adversely stratify students’ opportunities, then our ethical standards and codes give us a directive to act responsibly to try and change those policies and practices that impede student success (ASCA, 2004). The message here is to understand the prevailing written and unwritten standards of the community, school district, and individual work site and behave consistently within the parameters of those standards while working responsibly to change the ones that hurt students.

Port Washington Pregnancy Policy

ACADEMIC INSTRUCTION

The setting in which school counselors work defines the student-school counselor relationship. School counselors work in a setting designed for academic instruction. Parents send their children to school for curriculum instruction and when children’s emotional needs are being addressed by school counselors, conflict can result between the parents’ right to know what is happening in their child’s life and a student’s right to privacy.

TRUSTING RELATIONSHIP

The school counselor must provide a safe and secure environment in which trust can be established and maintained. Without the assurance of confidentiality, many students would not seek help. Counselors must keep confidential information related to counseling services unless disclosure is in the best interest of students or is required by law.

INFORMED CONSENT

The ASCA Ethical Standards (2010) tell us that the professional school counselor must give informed consent at the beginning of counseling sessions. The purpose of inform the counselee of the purposes, goals, techniques, and rules of procedure under which she/he may receive counseling at or before the time when the counseling relationship is entered. The meaning of confidentiality is given in developmentally appropriate terms and helps the student understand that school counselors will try to keep confidences except when the student is a danger to self or others; the student or parent requests that information be revealed or a court orders a counselor to disclose the information.

Incest Survivors Group

OPACITY OF LAWS AND ETHICAL CODES

The multifaceted nature of working with minors in schools makes it difficulty to develop law, ethical codes, written school board policies, or procedures for all the potential variables and situations faced by school counselors. For example, laws that address malpractice, negligence and student privacy rights are complex.

Laws are often defined by a court on a case by case basis. . Federal Courts in each state can interpret the same law in different ways from state to state and the interpretation will remain unresolved until a higher court can hear the matter, if ever. Although there is some legal guidance in education law, state department regulations and local and school board policy, school counselors often have to practice in absence of clear-cut guidelines.

NUMBER OF STUDENT-CLIENTS

The very nature of our role as school counselors impacts our legal and ethical obligations. As leaders, advocates, and change agents we are charged with reaching every student but the multiplicity of our role and the obligations we have to so many considerable reduce the amount of consideration and supervision we can give to each student, the extent to which we can document what we have done, and the effort we can undertake to see to each and every child’s individual needs. Caseloads do not spell the difference between a counselor who behaves professionally, ethically, and legally and one who does not, however, caseloads influence the thoroughness school counselors devote to each case.

STANDARD OF CARE

Standard of care is defined as what the reasonably competent professional would do. Standard of care is context specific. Negligence cases are founded on the assumption that the standard of care was not met. If you get into legal hot water, your attorney will want to demonstrate that you behaved as any other person in your profession would have. The following criteria are just a few pieces of information your legal council will gather to show that you behaved within the standard of care for your profession:



CASE STUDIES

Legal and Ethical Issues in Working with Minors in Schools

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1. DATE RAPE

Whitney, a 17-year-old student in your school, comes to your office distraught. Between tears, she tells you she went to a party last weekend and ended up passed out in an upstairs bedroom. She vaguely remembers being in and out of consciousness with at least two boys forcing themselves on her. She explains to you she may have been drugged since she only remembers sipping on a beer as she doesn't like the taste. She begs you not to tell anyone, especially her parents/guardians. What is the school counselor's advocacy and legal role?

2. DATING VIOLENCE AND CONFIDENTIALITY

Lynette's friends come to you for help because they believe Lynette is in trouble. Sixteen-year-old Lynette and 17-year-old Derrick are students in your school. Lynette has to report her whereabouts to Derrick, proof of her movements, and she is not allowed to speak or engage in any way with any other boys. When Derrick is not able to be around, he has one of his friends monitor Lynette's movements. You reach out to Lynette, and she begs you to stay out of it or "things will get worse. You cannot protect me." As Lynette's school counselor what is your next step?

3. DATING VIOLENCE AND THE OFFICE FOR CIVIL RIGHTS

You go to your principal with information about Derrick's violence toward Lynette. The principal responds that "Lynette has to figure out her own mess," that "this matter has nothing to do with the school or his responsibilities as an administrator." Is your principal correct? What is the school's obligation to Lynette? To Derrick?

4. ADDRESSING DATING VIOLENCE

At a neighboring school, an incident of dating violence occurred on school campus, and the teacher who witnessed the violence did not report it. The parents/guardians of the victim are now suing the school. In response, all district principals have been given orders to put together a committee at their school to address dating violence. You are put in charge of the committee. What resources will you access? What do you want to recommend be put in place?

5. PREGNANT STUDENTS

Your assistant principal comes to you and asks you for a list of all students in the school that you know are pregnant. He explains that he wants to notify these students about an alternative school for pregnant and parenting teens and encourage them to go there. Do you have any concerns about this request? Must you comply with this request?

6. PREGNANCY AS A TEMPORARY DISABILITY

Your administration asked you to "convince" Erika, a pregnant student, to attend the Pregnant and Parenting Teens alternative school. You have a relationship with Erika and you have been helping her stay on track, as she is often absent due to her morning sickness and doctors appointments. It has been a struggle; her teachers are very reluctant to give her make-up work because they believe that she should not let morning sickness keep her from her obligations. Teachers are condemning her absences with comments such as, "Well I had four kids and I never missed a day of work because of my morning sickness." You are growing weary of nudging, begging, cajoling the teachers into providing work and you are beginning to agree that it would be better for all if she did go to the alternative program. Up to this point Erika has expressed a desire to stay in her current school. You are considering using your relationship with Erika to influence her to change schools. What are your legal and ethical obligations to Erika?

7. SCHOOL COUNSELOR'S MISGUIDED ADVOCACY ASSISTANCE

Reggie comes to your office complaining that he is being harassed in his classes. Since he began telling classmates that he was gay last year, he has started wearing makeup and painting his nails. Your co-counselor is also in your office as you were doing credit checks together, and she suggests that Reggie tone it down. "Your classmates understand that you're gay," she tells him, "Why don't you make it easier for them to accept you by not flaunting it in their faces all the time?" Are there legal or ethical concerns with her advice?

8. PROM AND SCHOOL-SPONSORED EVENTS

A student comes to you seeking advice about whether or not she will be able to bring a same-sex date to the prom. Before she approaches the administration she wanted your thoughts. Can the student legally bring a same-sex date to the prom?