This article discusses the ethical and legal dilemmas facing counselors who work with minors in the school system. From an ethical perspective, minors should be able to expect confidentiality; however, parents and guardians have certain legal rights that limit the rights of minors. The author uses a hypothetical case to address these concerns and offers intervention strategies used for empowering minor clients in counseling.

A hypothetical case of Jennifer will be considered as the basis for framing the discussion of minors' rights. Jennifer, a 16-year-old student, went to her high school counselor revealing that she was pregnant and was planning to terminate her pregnancy. She had the support of her 17-year-old boyfriend, Todd. She insisted she would not tell her mother, a single parent. What are Jennifer's rights as a minor? How will the counselor deal with Jennifer's ethical rights without infringing on the legal rights of the parent? With this case, the school counselor is faced with how to avoid undermining the concept of confidentiality and privileged communication and still be able to give appropriate information to others who share concern and responsibility for the minor's welfare, as well as helping to maintain the client's best interest.

It has been noted that when entering into a counseling relationship with a minor, the circumstances involved need to be closely considered. Some general issues are to whom counselors owe the ethical obligation of confidentiality, parental consent and legal rights, informed consent, and competency level of the minor. In addition, specific concerns may include the client's relationship with the parent or guardian, whether disclosing information can be expected to help the situation, and the severity of potential harm or injury that could come if information is not disclosed (Anderson, 1996; Salo & Shumate, 1993). Confidentiality rights of the minor will be discussed first.

CONFIDENTIALITY

Remley (1985) stated that confidentiality is an ethical standard that is a rule of practice set forth by a profession. The American Counseling Association's (ACA) Code of Ethics and Standards of Practice require "that counselors respect their clients' right to privacy and avoid illegal and unwarranted disclosures of confidential information" (B.1.a). The ACA code lists the exceptions to confidentiality as, "[The requirement that] counselors keep information confidential does not apply when disclosure is required to prevent clear and imminent danger to the client or others or when legal requirements demand that confidential information be revealed" (B.1.c). The code further states, "When counseling clients who are minors or individuals who are unable to give voluntary, informed consent, parents or guardians may be included in the counseling process as appropriate. Counselors act in the best interest of clients and take measures to safeguard confidentiality" (B.3).

There is a lack of agreement in the literature (Anderson, 1996; Hendrix, 1991; Salo & Shumate, 1993) regarding confidentiality when counseling minors, specifically when sharing information with parents is concerned. Hendrix (1991) pointed out that confidentiality exists for the benefit of the client even though he or she may be a minor. The majority of the literature seems to show that minors have the same confidentiality rights as adults. Because the ACA Code of Ethics (ACA, 1995) permits involving parents or guardians in the counseling process, the counselor must practice with exceedingly professional expertise when disclosing confidential information.

Herlihy and Corey (1996) warned that although the legal right may belong to the parents or guardian, there is an ethical responsibility to obtain the minor's permission before releasing information. Before the information is released, the counselor should include the minor in the decision to release information to parents or guardians, and continual communications concerning further decisions are discussed with the minor.

For counseling to be effective and provide an environment in which the client feels free to share concerns, the counselor must be able to assure minor clients that personal information will be kept confidential (Ross, 1958).
Ross (1958) further concluded that this is especially significant with counseling children who may have experienced untrustworthy adults sharing other confidences previously.

Salo and Shumate (1993) contended that professionals who work with the sexual-medical needs of minors recognize the importance of keeping confidentiality for the minor to feel free enough to disclose issues that may be embarrassing. Often minors are fearful of punishment or shame if the parents or guardian are informed (Salo & Shumate, 1993). Malpractice action against a counselor may result from unwarranted violations of confidentiality, which leads to a discussion of privileged communication.

## Privileged Communication

Confidentiality is an ethical standard set forth by a profession, whereas privileged communication is granted by law. Hendrix (1991) stated that the law supersedes ethics in three mental health situations for minors: reports of being abused, reports of harm to self, or reports of a plan to do harm to another person. There are other exceptions to confidentiality and privileged communication. If counselors are ordered by a court to release counseling records, they can state their objections, but they will be required to forfeit these records or they may be found in contempt of court (Salo & Shumate, 1993). Whenever in doubt, counselors should consult with an attorney as well as other counseling professionals.

Privileged communication is defined as the legal right that protects clients from disclosing information during legal proceedings without informed consent (Salo & Shumate, 1993; Taylor & Adelman, 1989). Remley (1985) inferred that if communication between a client and a counselor is considered as privileged communication under the law, a judge may not force the counselor to disclose this information.

Hall and Lin (1995) reported that in the United States, children under the age of 18 years are considered to be legal minors, and therefore they have fewer legal rights. Nonetheless, the fact that children are minors does not invalidate their claim of constitutional right to privacy (Boomer, Hartshorne, & Robertshaw, 1995). Salo and Shumate stated, "Privacy rights for minors are generally seen as an extension of the parents' rights to privacy; minors do not hold these rights in isolation from their parents" (1993, p. 28). Parents are seen by the courts as having the primary responsibility for the rearing of their children, and counselors have the legal obligations to the parents or guardian of the children counseled. It was also noted by Salo and Shumate that "minors lack the capacity to make informed, voluntary decisions in the eyes of the law" (1993, p. 29).

Anderson (1996) cautioned counselors in schools that receive federal funding that they are bound by the provisions of the Family Educational Rights and Privacy Act of 1974 (FERPA, or the Buckley Amendment). "Within the context of these controlling provisions, counselors must exercise discretion about the extent of the information to be released to parents from their personal records of confidential counseling sessions" (Anderson, 1996, p. 34). It was further noted that there may be situations in which a counselor may decide that it is not in the best interest of the client to disclose certain information even to a parent. If this is the case, unless compelled by local school board policy the counselors are not required by FERPA to make the personal records of counseling sessions available to a parent or guardian (Anderson, 1996).

Ferris and Linville (1985) contended that counselors should avoid recording sensitive disclosures that may not be in the best interest of the client if records are inspected. They also cautioned against the taping of counseling sessions unless immediately reviewed and then erased.

As far as the legal protection for minors dealing with the abortion issue, Salo and Shumate noted, "The U.S. Supreme court held that the states have a significant interest in supporting certain abortion regulations aimed at protecting children which is not present in the case of an adult" (1993, p. 36). The Court has also held, however, that states do not have the authority "to give a third party an absolute, a possibly arbitrary, veto over the minor's abortion decision" (Salo & Shumate, 1993, p. 39). Several states have enacted a judicial bypass procedure enabling a minor to petition the court and demonstrate that she is mature enough to make a decision that an abortion is in her best interest or is her best option.

## Parental Consent

Another issue of concern for counselors is that of parental consent when counseling minors. Salo and Shumate (1993) stated that few states have laws that mandate parental or guardian consent before entering into a counseling relationship with a minor either in the school or agency setting unless the child lacks the capacity to make an informed decision. Even though this may be true, agencies and school districts may adopt policies requiring permission before counseling is provided.
The ACA Code of Ethics (ACA, 1995) reinforces the idea that the parents or guardian of a minor may indeed be a valuable asset to the counseling process. Herlihy and Corey (1996) agreed that it would be ill-considered for counselors not to honor parents' rights and responsibilities for minor children, and in doing so determine the best ways in which to include them in the process. It has been noted by Salo and Shumate (1993) that counselors concede that parents should be informed of a minor's decision to enter into a counseling relationship. It seems that informing clients and their parents or guardians as to the purpose of counseling and the limits of confidentiality may sometimes avoid complications.

A study by Gibson and Pope (1993) showed that 44% of counselors surveyed see minor clients without parental consent. Although counselors recognize the importance of including the parents or guardian in the counseling process with minors, they also recognize that minors may show reluctance toward their inclusion. The need to respect the wishes of the minor clients is certainly important, unless a situation arises where the counselor feels it is in the best interest of the client to include the parents or guardian.

**INFORMED CONSENT**

When a minor seeks a counseling relationship without parental consent, the privacy rights of that minor need to be considered along with the legal rights and responsibilities of the parents or guardian. Normally, the older the minor the more rights are granted, because it is believed that older minors have the capacity for more rational decision making.

When working with minors who are unable to give consent, the counselor protects the clients' best interest and attempts to provide some understanding of the therapy process. Wilcoxon (1990) expressed his concern toward the term client's best interest by asking, "What if the minor cannot identify his or her best interest? Can the counselor determine best interests for a minor? If so, to what extent can the parent(s) or guardian(s) be involved in determining these interests without the counselor risking the 'protection' element of this standard?" (p. 12).

The ACA Code of Ethics (ACA, 1995) speaks to client rights when counseling is initiated and throughout the counseling process:

Counselors inform clients of the purposes, goals, techniques, procedure, limitations, potential risks, benefits of services to be performed, and other pertinent information. Clients have the right to expect confidentiality and to be provided with an explanation of its limitations, including supervision and/or treatment team professionals; to obtain clear information about their case records; to participate in the ongoing counseling plans; and to refuse any recommended services and be advised on the consequence of such refusal. (A.3.a.)

**COMPETENCY**

Ethical and legal debates surround the age limits at which minors are capable of assuming responsibility of their rights. Belter and Grisso (1984) stated, "Affording rights of self-determination to minors when they are less capable of understanding would not be in the minor's best interest" (p. 899). On the other hand, to treat minors as if they are all incompetent would be a disservice for their continual growth.

Belter and Grisso (1984) proposed that most minors at 14 or 15 years of age have probably reached a mature level of cognition that would qualify them to be able to give informed consent. Hall and Lin (1995) noted some points for a counselor to consider. To determine that a minor is competent, he or she should: "(a) attend to the decision task at hand, (b) delay a decision response until the decision-making process is completed, (c) weigh treatment alternatives, (d) consider risks associated with different treatment alternatives, and (e) estimate costs and consequences of choosing or not choosing various treatment alternatives" (p. 65).

No matter whether a counselor assumes a minor is of the age of competency or not, their dignity should be upheld throughout the counseling process along with their right to help in the decision-making process.

**DECISION-MAKING MODELS**

Several decision-making models are used by counselors to help evaluate an ethical and legal dilemma and promote the welfare of clients. Kitchener (1984) developed a model for critical and intuitive evaluation based on moral principles. Hall and Lin (1995) listed five ethical principles, based on Kitchener's model, related to children's rights:

1. Nonmaleficence is evidenced when we do no harm to our children.
2. Beneficence is active when we promote children's psychological growth.
3. Autonomy is shown when we allow children the responsibility of weighing treatment alternatives.
4. Justice is affirmed when children are encouraged to participate in choosing the least intrusive treatment option.
5. Fidelity is protected when counselors respect their bond with children by keeping their promises to them. (p. 70)

In using Hall and Lin's (1995) model, Hendrix (1991) asserted that allowance should be made for children. Children should be informed before revealing confidential information, thereby maintaining trust levels and dignity and keeping counseling relationships intact.

Corey, Corey, and Callanan (1993) reported a seven-step decision-making process for ethical problems, which includes the following steps:

1. Identifying the problem
2. Identifying the potential issues involved
3. Reviewing the referenced ethical guidelines
4. Obtaining consultation
5. Considering possible and probable courses of action
6. Enumerating the consequences of the decisions
7. Deciding on what seems to be the best course of action (pp. 11-12)

No matter which steps are taken in making ethical or legal decisions about dilemmas in the counseling profession, it is agreed that following some procedure to examine the issues surrounding the question is important for drawing competent conclusions. Some suggestions include making clear documentation, following some procedure for looking closer and more objectively at issues, and consulting with other counseling professionals and legal sources.

INTERVENTION

After examining the issues surrounding the rights of minors, including confidentiality, privileged communication, parental consent, informed consent, and competency, let us now examine intervention strategies with the case of Jennifer. First of all, a pregnant minor who enters the counselor's office seeking counseling may know little about her rights as a minor, including informed consent, limits of confidentiality, and parental-legal rights, much less the consequences of facing all the decisions she will need to carry out. The importance of educating a client about these issues before considering options is paramount.

The counselor must be informed of the state laws as well as school board policy and the standard of behavior expected of counselors in the local community. Being aware of appropriate referrals to medical and legal services is essential. "The list of referrals should include: abortion and adoption providers, teenage pregnancy service providers, legal resources for judicial bypass, and counseling services specific to abortion and adoption" (Salo & Shumate, 1993, p. 58).

The counselor has no ethical obligation to inform Jennifer's mother of her pregnancy or the abortion decision. Even though parental consent for an abortion is not necessary by law in most states, it is the counselor's responsibility to be aware of the state laws and to inform Jennifer. "Squeal laws" (court mandates to report) vary from state to state, and may change along with the political climate in each state. Some states urge mental health professionals to involve an attorney whenever there are matters that include sex, drugs, or pregnancy and a minor. In light of these changing legal circumstances alone, the counselor will want to encourage Jennifer to inform her mother about her pregnancy and abortion decision. However, if Jennifer decides not to disclose the information to her mother, then the counselor must be prepared to defend this decision in that Jennifer was mature enough to make such conclusions without parental involvement and that no clear danger existed.

If Jennifer decides to inform her mother about her pregnancy and plans for an abortion, the counselor will want to help her "minimize the negative consequences and maximize the potential benefits in this disclosure" (Taylor & Adelman, 1989, p. 82). Empowering Jennifer to make competent decisions and assisting her in the decision-making process may be a complex dilemma for all involved. It is unlikely that any solution will be easily undertaken; but by following the aforementioned steps, it can hopefully be resolved with the least amount of anxiety for all parties involved.

REFERENCES


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