Research indicates that counselors struggle when faced with issues surrounding confidentiality rights of minors and rights of parents. Davis and Mickelson (1994) reported that, in responses to vignettes of legal and ethical dilemmas, school counselors were most confused when dealing with legal issues surrounding parents' rights and students' rights. Similar research by Isaacs and Stone (1999) indicated that there is still considerable variance in school counselors' perceptions of when confidentiality should be breached, particularly in situations where no clear legal or ethical precedent has been established. Such situations can be quite vexing, especially when they carry the potential for significant consequences for students.

Although issues surrounding the confidentiality rights of minors have been discussed extensively (Gustafson & McNamara, 1987; Isaacs & Stone, 1999; Kaczmarek, 2000; Ledyard, 1998; Myers, 1982; Sealander, Schwiebert, Oren, & Weekley, 1999; Welfel, 2002), specific guidance for responding to parental demands for confidential information is limited. Difficulties in balancing parental and student rights arise because the confidentiality rights of minor children are not always clearly delineated by law, ethical codes, or social standards (Isaacs & Stone; Ledyard). This lack of clarity may result in school counselors feeling as if they are walking a tightrope between being a professional helper and being an informant to parents. When faced with confidentiality dilemmas that involve minor children, school counselors must take into consideration a number of factors. Central to confidentiality decisions is consideration of the legal and ethical guidelines related to parents' and minors' rights, competency, or developmental age of the child, and the best interest of the child (Gustafson & McNamara; Isaacs & Stone).

This article focuses on issues surrounding parental rights and the confidentiality rights of minors. Primary legal and ethical considerations with respect to confidentiality of minors are reviewed, arguments central to confidentiality issues are presented, and alternatives available to school counselors when parents demand to know what a child has revealed in a counseling session are provided.

**CONFIDENTIALITY RIGHTS OF MINORS**

As is commonly understood, the ethical codes and the law are in agreement that confidentiality is to be broken in cases where child abuse is suspected, in cases of harm to self such as attempted suicide, and in cases where clear and imminent danger to others is threatened. Beyond these three primary instances where confidentiality must be broken, there is ambiguity relative to who has the right to information provided by minors in counseling sessions. Conflicts arise with regards to information shared in counseling sessions because, historically, parents or legal guardians control the legal rights of their children, while the ethical codes extend confidentiality to all clients (Lawrence & Kurpius, 2000). However, neither the law nor the ethical codes provide specific and consistent guidance as to what school counselors should do in all situations where considerations of breaches of confidentiality are relevant. This lack of clarity is further complicated for school counselors because open communication norms are common within school settings among educators, and this practice conflicts with the confidentiality norms of counselors (Welfel, 2002). A brief review of the legal considerations is addressed first, followed by a discussion of the ethical considerations.

**Minors' Confidentiality Rights and the Law**

In most areas, the law has not extended confidentiality rights to children. This position is based on historical precedent and issues of competency. Historically, children have moved from a position where parents have "absolute power" over their lives to the degree that they could be sold into slavery, to their current status where a host of laws have been enacted to protect their rights and well-being (Lawrence & Kurpius, 2000. Recent federal
law protects the confidentiality of minors in receiving alcohol and drug treatment (Sealander et al., 1999). In addition, some states have enacted legislation that extends confidentiality for minors in situations involving birth control, pregnancy, abortion, and testing for sexually transmitted diseases (Corey, Corey, & Callanan, 1998; Welfel, 2002) as well as the right to confidential HIV testing (North, 1990).

With the exception of the special circumstances mentioned above, parents control the legal affairs of their minor children (Lawrence & Kurpius, 2000; Welfel, 2002). However, opinions vary considerably regarding minors' confidentiality rights in counseling. Remley (1993) stated that, "Parents or guardians probably have the legal right to know the content of counseling sessions with minors". Unless state or federal law indicates an exception, others have expressed general agreement with this legal perspective (Lawrence & Kurpius; Welfel). Yet, in contrast to the extensive legal privileges of parents noted, Corey et al. (1998) stated that, "If parents or guardians of minors request information about the progress of the counseling, the therapist is expected to provide some feedback". This implies that specific information does not necessarily have to be revealed, yet some general feedback may be expected. As comprehensive as the law may appear, noted discretion can and should be used when inquisitive parents seek information disclosed in counseling sessions.

In contrast to Remley (1993), Myers (1982) asserted that, "The fact of minority in no fashion lessens the importance of the sanctity of confidential communications". Myers then suggested that the duty to confidentiality may actually be "enhanced" for those dealing with minors, noting that "the therapist's duty of confidentiality runs to the client, not the parents". Welfel (2002) indicated that such positions validating minors' rights have increased since a 1967 Supreme Court ruling that concluded that equal protection under the law granted by the Fourteenth Amendment and the Bill of Rights, as a whole, was not solely for adults. Fischer and Sorenson (1996) noted that "state laws typically do not address questions related to counselors' keeping information from parents" (p. 25), and that counselors should use their professional judgment regarding when, how much, and what information should be shared with parents. However, it should be noted that the each state's laws are unique (Myers), and it is the school counselor's duty to learn if the laws of the state in which they practice have addressed this issue as well as what that law asserts.

**Minors' Confidentiality Rights and Ethics Issues**

The considerable control that the law affords parents over the legal rights of their children may conflict with the standards of practice provided by the ethical codes. To further compound this dilemma, the ethical codes offer little specificity regarding the discretion extended counselors with respect to confidentiality and minors. The American Counseling Association (ACA, 1995) Code of Ethics and Standards of Practice includes the statement, "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). Details on what constitutes "as appropriate" while "safeguarding confidentiality" are left open, as is a clear explanation of what constitutes "the best interest of the client."

In its Ethical Standards for School Counselors, the American School Counselor Association (1998) has gone to considerable lengths in attempting to consider the rights and needs of parents, administrators, and teachers regarding information revealed by minors in counseling. The writers of the standards are to be commended. The fact that the results of these efforts leave school counselors with a document that includes mixed messages reflects the dilemma that is genuinely present. The Ethical Standards for School Counselors include the statement that the school counselor, "Protects the confidentiality of information received in the counseling relationship as specified by federal and state laws, written policies, and applicable ethical standards. Such information is to be revealed to others with the informed consent of the counselee, consistent with the counselor's ethical obligation" (ASCA, A.2.f). Yet, these same codes include the statements that the school counselor, "Respects the inherent rights and responsibilities of parents" (ASCA, B.1.a) and "Makes reasonable efforts to honor the wishes of parents ... concerning information he/she may share regarding the counselee" (ASCA, B.1.c.). What does one do when the law, the policy, and the ethical codes disagree? What does one do when the counselee does not give consent and parents demand to know information revealed? What constitutes a "reasonable effort"? In such instances, school counselors are caught between respecting parents' rights and maintaining confidentiality. Clarity for a course of action is not readily available. School counselors' struggles regarding a course of action are somewhat abated by the overriding statement in the ethical standards that the counselor, "Has a primary obligation to the counselee" (ASCA, A.1.a). Further, the ethical standards set forth in the preamble and maintain throughout a consistent bias toward the counselee's autonomy. It is this ethical stance that conflicts with legal and parental notions of minors' rights.

Adjunct with the ethical codes, there are two primary, interrelated issues that determine the level of confidentiality afforded minors the best interest of the client and the developmental level of the client (Gustafson & McNamara, 1987). The best interest of the client can be complex and quite unique for each situation. Such decisions are best made on a case-by-case basis. Welfel (2002) noted, "the degree to which confidentiality can be honored is directly related to the age and maturity of the minor"; and research assessing maturity relative to confidentiality afforded is
based on minors’ understanding of the “nature, risks, and benefits of counseling sufficiently to give informed consent”. Thus, there appears to be a link between the degree that students understand the rights and issues of the counseling relationship and the degree that confidentiality is honored.

Gustafson and McNamara (1987) reviewed findings related to developmental level and an understanding of the rights and issues surrounding the counseling relationship. Adolescents, 14 years or older, have been found to be as capable as adults at making decisions about entering counseling relationships. Indeed, Croxton, Churchill, and Fellin (1988) argued for consideration of 14 years of age as the standard for consent to counseling. Children under age 11 are generally not cognitively able to comprehend and make well-informed decisions regarding counseling. Adolescents between the ages of 11 and 14 vary in their understanding of the rights and issues of the counseling relationship and should be judged based on their individual development levels. In essence, the degree that a child has attained formal operations thinking appears to be generally consistent with their ability to comprehend the rights and issues necessary to make informed counseling decisions. Thus, there is a general consensus that the younger the child, the more liberal the confidentiality policy. Such a position is, of course, premised on the notion that, with all legitimate breaches of confidentiality, the counselor is acting in "good faith" for the betterment of the client.

Professional Considerations

Parental and client rights, developmental levels, and student opinions notwithstanding, there are broader issues that counselors should consider when encountering concerns about revealing confidential information of minor clients. These broader issues are centered around the role of school counselors in society and the importance of confidentiality to that role.

Central to the role of school counselor is the right of confidentiality (Cohen & Cohen, 1999). It follows that the more confidential information counselors are compelled or choose to disclose, the less counselors remain true to their role. As a profession, it is the duty of counselors to protect and maintain their role within school systems. Without careful consideration of the extent to which school counselors maintain confidentiality, there is a risk of blurring the boundaries that define counseling and of deteriorating the role. Confidentiality is the cornerstone of counseling and should be guarded at extreme costs, lest the profession redefine itself.

Building from the above point, school counselors should also take into consideration the state in which they reside and the importance that state has placed on having counselors in schools. For example, Tennessee has mandated counselors in school systems. From this action, it could be argued that the governing bodies and education boards recognize that having a person who fulfills the role of "counselor" in students' lives is important or even essential. It could also be argued that the governing powers recognize that the counselor's role has unique characteristics that delineate the position from that of teacher or principal, and that these delineating characteristics are also significant. Therefore, if a state supports counselors in the school systems, by that action they appear to be indicating support for the confidentiality of students with respect to discussions of their personal problems. This argument is, of course, predicated on the idea that the legislators who recognized the need for school counselors understand the central role that confidentiality plays in counselors' effectiveness. Such an assumption may be premature or wishful thinking. The problem is that the presumption of confidentiality may directly contradict state laws or traditions with regards to parental rights. Although not directly related to parental rights, it could be argued that states that have established privileged communication rights for licensed school counselors have a stronger basis for student rights to confidentiality.

OPTIONS FOR RESPONDING TO PARENTAL DEMANDS FOR CONFIDENTIAL INFORMATION

So what does a counselor do when a parent demands to know what their minor child said in a confidential counseling session? Fortunately, there are a number of alternatives available to school counselors that do not compromise confidentiality and that respect parents' rights as well as those of students. In addressing approaches for responding to inquiring parents, it should be noted that the more proactive school counselors can be in clarifying confidentiality boundaries, the less likely conflicts will arise. Indeed, the Ethical Standards for School Counselors
(ASCA, 1998) require that boundaries be clarified. This is accomplished with good informed-consent practices with parents and students. During initial sessions, students should routinely be provided instances where confidentiality must be broken. In cases where parents are aware from the onset that their child is seeing a counselor, confidentiality boundaries should be clarified in initial discussions. In instances where students use counseling services without individualized notification to parents, confidentiality boundaries are best disseminated in student handbooks that are distributed to parents at the beginning of the school year.

If parents or legal guardians demand that a school counselor reveal information told by a minor child, several approaches are available for resolving the situation. One of the first approaches a counselor might take is to use empathic listening skills to allow the parents to vent their emotions and to ascertain their specific concerns. This process will begin developing rapport, validate feelings, and may result in an immediate diffusion of issues. Failure to do this could escalate the situation and result in an unnecessary power struggle. Parents are likely acting in a manner that they perceive to be in the best interest of their child. School counselors should be cognizant of this perspective and convey respect for the parents’ concerns. In addition, counselors may know a number of issues with which their client is dealing, and it may be that the parent's concerns are not what the counselor may initially speculate. Counseling experience teaches that it is difficult to predict just what various people view as most critical. It may be that the parents’ concerns involve an issue that their child may readily discuss with them (Remley, 1993). The resolution may be as simple as obtaining permission to share the information.

Another way to respond to parents is to reframe their concerns in a manner that provides an alternate viewpoint about their child's growth in dealing with problems. To this end, the counselor can reframe the child's withholding of information from parents as a positive rather than a negative event. The counselor might say something like the following:

A natural part of a child’s development is to begin building their sense of personal identity. To do this, children begin developing areas of their life in which they make personal decisions. You have probably noticed this in various ways such as how your child makes decisions about their dress or being more protective of their personal space such as their bedroom. These are all healthy signs of individual identity development that indicate your child is on track. Sharing private information with a source outside the family, such as a counselor, is often not a rejection, but an important developmental step and symbolic gesture that they are dealing with their concerns on their own without having to be overly dependent on their family. I know that most of us as parents want our children to lean on us and look for our help. However, knowing that they have themselves and others as a resource allows them to share information with their family out of choice rather than by default due to limited options. Sometimes we can help them most by acknowledging their ability to make it through difficulties without us, at the same time we communicate that we are available if they want us.

Subsequently, parents can be reminded that if the client docs not trust the counselor's commitment to confidentiality, the child may not share honestly. Without the assurance of confidentiality, there may be no adult in the child’s life with whom to talk openly.

In addition to the above initial approach, school counselors should consider explaining the ethical codes to parents. Counselors sometimes forget that the codes are not a shrouded document and that they can be provided to others. Many times parents are not aware of the codes’ existence or significance. The specific instances where the codes explicitly require a breach of confidentiality should be emphasized to parents, assuring them that they will be informed in such critical instances. Parents could be provided a copy of the codes if deemed helpful. Using the codes as a reference, the counselor could clarify the importance of confidentiality to the profession and counselors’ work in the schools (Remley, 1993). This could be followed by explaining that it is not the counselor's job to be an informer between parents and children. Revealing confidential information to parents would likely make the counselor appear to be an informer in the eyes of students and, thus, jeopardize student relationships and the role of counselor in helping students with problems. Inappropriately assuming the role of informer may also prevent students and parents from developing necessary interpersonal skills to grow and reach successful resolutions on their own. The outcome of these discussions may be that the parents decide that it is in the child's best interest not to seek the information.

After discussion of the above perspectives and depending on the circumstances, school counselors might suggest that the parents themselves ask the child about the desired information. Many parents are fearful of direct inquiry and may be desiring to use the counselor as a means to circumvent an agonizing conversation. Although counselors can be of great help in facilitating difficult parent-child interactions, school counselors should not become a substitute parent if it can be avoided. A discussion of parental and counselors roles may be warranted to point out distinctions in obligations and duties.

At some point, the counselor should inform the client of their parents’ inquiry and possibly suggest ways that the client might tell the parents pertinent information, if desired. Counseling sessions could include role-playing difficult conversations with parents. Taylor and Adelman (1989) argued strongly that counselors should attempt to establish a working relationship with minor clients that includes discussions that promote the client taking the lead in sharing information with parents when indicated. Such an approach includes enhancing the client's emotional motivation,
empowering clients through teaching communication skills, and minimizing negative consequences of disclosure.

It is recommended that school counselors reveal parental inquiries to clients. Not doing so increases the risk of triangulation between parents and children, and the risk of seriously damaging rapport on both fronts. However, depending on the particulars of the situation, there may be rare instances where parental inquiries would be best left unsaid. Consultation with counseling colleagues, careful consideration, and judgment should be used in consideration of such decisions.

Another alternative is to discuss approaches parents might employ with their child or refer them to another counselor who would do the same. Discussion and instruction on basic parenting strategies may result in satisfactory improvement. School counselors are again cautioned as to the degree that they assume the role of counselor with parents. If family problems are considerable, referral to a mental health agency would most likely be appropriate. Along these same lines, the counselor could suggest a session with the student and parents together (Remley, 1993), assuming all are amenable. In this instance the counselor might take the role of a mediator who guides, mitigates, and educates as weighty information is approached.

If the above approaches fail to resolve the issue, school counselors are left with the two most extreme options: to breach confidentiality or remain silent. If the counselor can build a convincing case that the information should be revealed to parents because not revealing the information would result in clear and imminent danger to the child or adolescent, then the counselor should tell the parents. Other than suicide, clear and imminent danger is sometimes hard to define. However, there are times when counselors may begin to question whether or not certain client behaviors constitute clear and imminent danger. If it appears that some continued or future behavior may place the child or adolescent in a physically dangerous or life-threatening situation, two procedures are recommended. The first is that counselors consult with colleagues regarding the level of danger perceived. The second is that counselors remind clients of the clear and imminent danger statements provided in the informed consent, adding that the current information received is at such a level of danger that breaking confidentiality is under consideration. The intent of this discussion is to maximize potential of maintaining the client-counselor relationship by including the client in the process and, thus, abating feelings of betrayal and assuring that there are no undue surprises. If the client continues to communicate intent to proceed with the dangerous behavior, this may be construed as a cry for help and a breach of confidentiality may be warranted. On the other hand, serious discussions about dangerous behaviors and concomitant reporting to parents may, in and of itself, lead to a discontinuation of the dangerous behavior.

Legal consequences for breaking confidentiality with minor clients are most likely remote. This is because minor clients are unlikely to pursue a legal recourse with their school counselor and probably could not do so without parental approval. Parents are unlikely to pursue a legal recourse because they would presumably approve of receiving information about their child. Ethically, such instances would most likely be addressed at the local level. Opinions may vary among professionals as to what level of danger warrants a confidentiality breach and, thus, pursuit of ethical charges at the national level is also unlikely. Thus, the matter becomes largely a professional issue that hinges more on the counselor's desire to maintain the respect and confidence of the students served. Frequent, inappropriate breaches of confidentiality could quickly result in few students seeking services and deterioration of the counselor's role within the school. Implications of such consequences should be given the utmost consideration.

If the counselor does not want to tell the parents the desired information and the parents persist in their legal right to know, the counselor can refuse to reveal the information (Remley, 1993). In the unlikely case that the issue can not be resolved, parents have the option of administrative or legal appeals. At the most extreme, parents could take the matter to court and let a judge make the final decision. Although the outcome from such proceedings is anyone's guess, the general trend has been for courts to extend more rights to minors (Lawrence & Kurpius, 2000; North, 1990; Sealander et al., 1999).

**SUMMARY**

Even though there is still uncertainty regarding confidentiality issues with minors, school counselors are not without alternatives when parents inquire about their child's issues. Much can be resolved through an understanding of the issues, careful planning, and diplomacy buttressed with counseling skills. To this end, counselors should keep up-to-date with ethical codes and state laws; maintain a network of colleagues with whom to consult; educate parents regarding confidentiality issues; and establish, in advance, procedures and alternatives for responding to delicate situations. Such efforts will provide a foundation from which to respond and help to eliminate the stresses school counselors face as they walk the tightrope between parental rights and students' confidentiality.

**References**


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