

Article 14

Ethics, Laws, and Adolescents: Confidentiality, Reporting, and Conflict

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Counselors have long considered confidentiality as the cornerstone of the therapeutic relationship with clients. The 1995 Code of Ethics of the American Counseling Association makes direct reference to the client having the “right to expect confidentiality” (A.3.a), admonishing counselors to “...respect their client’s right to privacy and avoid illegal and unwarranted disclosures of information” (B.1.a). With confidentiality as an acknowledged priority, how did a seemingly clear concept become so complicated?

Mental health professionals know that ethics and laws sometimes conflict on issues of confidentiality, and with minors the situation becomes even more confounded. The American School Counselor Association Ethical Standards (1998) posit that “...each person has the right to privacy and thereby the right to expect the counselor-counselee relationship to comply with all laws, policies, and ethical standards pertaining to confidentiality” (Preamble). This is a tall order and may not always get accomplished with clarity and confidence. Counselors can quickly get squeezed between the pressures of statutes, rights of family members, professional ethics, and personal integrity.

Conflicting Needs

There are vacillating priorities between the rights of the child, school policy, guardians’ rights, and dictates of laws and ethical codes (Glosoff & Pate, 2002; Lawrence & Kirpius, 2000). Which are the determining factors? There is a tenuous balancing act among the parents who desire autonomy in raising their children, the governmental agencies safeguarding public welfare, and the minor who deserves both privacy and protection. Professional ethical codes promote high standards for practice and client protection, and these can both oppose and conform to statutes and court precedent.

Study of professional ethical codes echoes the conflict between an adolescent being thought to have certain rights to confidentiality, versus a minor not having the ability to limit a parent’s legal rights to access information (Glosoff & Pate, 2002). The ACA Code of Ethics (1995) underscores the needs for the counselor

to clarify client relationships in families to directly address any possible conflicts, and to promote flexibility in the decision to involve a guardian in the counseling process as long as confidentiality and the client’s best interests are safeguarded (A.8, B.3). Counselors are urged to become familiar with the details of the ethical codes of their professional affiliations to ascertain areas of possible conflict with state and local laws.

Recognition of the need for a thorough understanding of ethical and legal requirements also applies to the issue of duty to warn. The ethical or legal need for a counselor to assess the level of risk and warn law enforcement or an intended victim of possible danger was first prescribed in the famous 1976 case of *Tarasoff v. Regents of the University of California* (Kagle & Kopels, 1994; Kearney, 1998). As stated, this duty can be fulfilled by warning law enforcement, communicating directly with the intended victim, telling others who were likely to then inform the victim, or taking other steps considered necessary and reasonable. Although professional codes of ethics such as ACA’s or ASCA’s directly address the duty to warn as an ethical and moral obligation where there is a clear and imminent danger, states vary as to whether or not this is a legal requirement (Isaacs & Stone, 1999). Ignorance of the law will not protect a counselor who finds him- or herself in a vulnerable position.

One area in which there is no apparent conflict between laws and ethics is in the situation of child abuse or neglect (Glosoff & Pate, 2002). Every state has mandatory statutes regarding reporting of child abuse and neglect, with 20 jurisdictions having reporting of abuse as a specified exception to legal privilege (Glosoff, Herlihy, & Spence, 2000). An associated common exception to confidentiality is when a counselor receives a court order to provide documents or testify (Glosoff & Pate, 2002).

Approaches to Confidentiality

Aside from mandated protective reporting, the counselor must choose one of three stances regarding confidentiality with minors: strict confidentiality, no guaranty of confidentiality, and flexible confidentiality

(Kearney, 1998; Lawrence & Kirpius, 2000). As would be expected, strict confidentiality precludes sharing any information outside of the counselor-client relationship and comes from the acknowledgment of trust as the bedrock of effective therapy. However, as was referenced already, this presents a legal quandary. Since a counselor is in a position to require parental consent to begin treatment in most instances, strict confidentiality could be in direct conflict with law, producing court action by the guardians. Strict confidentiality also creates defiance of court orders to provide treatment information; all of which puts the practitioner in jeopardy (Kearney, 1998; Lawrence & Kirpius, 2000). Conversely, no guaranty of confidentiality erodes the foundation of trust in therapy, leading to increased client resistance and premature termination. In this situation, from the outset an adolescent will be reluctant to enter a counseling relationship with a professional who apparently views the referring agency, court, school, or guardian as the real client rather than the teen.

An attitude of flexibility toward confidentiality offers the ability to be adaptable to various situations, but throws the counselor into the nebulous area of trying to negotiate the balance of ethical and legal dictates. A more moderate stance embraces the advice of the ACA Code of Ethics regarding clarification of counseling relationships and can draw the adolescent into the decision-making process, which strengthens therapeutic rapport. Similarly, a counselor asking the child's permission before disclosure gives the minor a sense of control and helps diminish damage to trust when sharing information is necessary. Due to the malleability of this stance, and because laws are different among states, it is imperative that a counselor be aware of statutory requirements for mental health professionals in his-or-her area and stay current on changes in legislation (Glosoff & Pate, 2002; Kearney, 1998; Lawrence & Kirpius, 2000). Even with a strong knowledge base, the counselor can still be in an untenable position, as is summarized by Isaacs and Stone (2001): "[T]here is little in ethical codes or legal precedent that guides counselors in their consideration of either age, developmental maturity, or seriousness of activity." The professional is left to his or her own best judgment in many instances.

Factors in Decision Making

A counselor with a flexible orientation toward confidentiality will usually make an independent decision based on merits of each separate case that promotes the moral principle of fidelity in which the child's trust is protected by keeping the promises

inherent in confidentiality issues (Glosoff & Pate, 2002). Certainly, an evaluation of what is in the child's best interest will predominate, which underscores the moral principles of beneficence or, at the very least, nonmaleficence (Glosoff & Pate, 2002). This is an ambiguous process that is colored by the counselor's cultural background and personal values and biases.

Isaacs and Stone (1999) pointed to the historical precedent of children being awarded rights and privileges commensurate with their age. Generally, the younger child has less competence, and he or she depends more on adults to protect his or her privacy and well-being (Mitchell, Disque, & Robertson, 2002). Encouraging an older, mature adolescent to participate in decision making furthers autonomy and strengthens the trust between therapist and client, and justice is affirmed by empowerment through acknowledging the right of the child to have choices. Historically, there has been a general legal precedent that a child is considered a mature minor after the age of 14, and he or she is given medical rights about health issues or mental health care in some states (Isaacs & Stone, 1999; Mitchell et al., 2002).

Another prominent factor in making a determination is the amount of risk or seriousness of the behavior of the child in question. Isaacs and Stone (1999) mailed questionnaires to eight Florida school districts in which 627 elementary and secondary school counselors reported they would breach confidentiality in situations involving a threat to life or health. In descending order of the percentage of counselors who answered, the following issues were considered dangerous enough to warrant breaking confidentiality: suicide, retaliation after victimization, use of crack cocaine, sexual activity with partners who were HIV positive, armed robbery, depression, abortion, and marijuana use. A follow-up study of 1,400 members of the American Mental Health Counselors Association in 36 states confirmed previous trends (Isaacs & Stone, 2001). Thus, consideration of divulging confidential information was strongly influenced by a hierarchical ranking of risk that is analogous to considering the minor's age in a final determination.

Of note is the 1994 study by McGuire, Parnell, Blau, and Abbott in which the expectations of adolescents on confidentiality were explored. This study of 30 volunteer adolescent clients indicated that minors significantly valued privacy but recognized limitations to confidentiality. If given a choice, the adolescents chose higher levels of confidentiality but appeared to have realistic expectations such as understanding the need for disclosure when a life was at risk, and recognizing the right of a court to request confidential information.

This is particularly relevant to school counselors who have the additional constraints of school policy guiding their actions and also carry responsibility to other students, teachers, and administrators. This quandary is described in the ASCA (1998) Ethical Standards that state the counselor should advise "...appropriate officials of conditions that may be potentially disruptive or damaging to the school's mission, personnel, and property while honoring the confidentiality between the counselee and counselor" (D.I.b.). The ASCA standards also urge school counselors to establish a collaborative relationship with parents, noting an obligation to provide parents with "...accurate, comprehensive, and relevant information in an objective and caring manner, as is appropriate and consistent with ethical responsibilities to the counselee" (B.2.b).

Recommendations

Acknowledgments of adolescents' expectations of privacy in counseling emphasize the importance of explaining limitations to confidentiality to both the adolescent and his or her parents before starting treatment (McGuire et al., 1994). Including both guardian and minor in the initial meeting contributes to the process of building therapeutic rapport by allowing a mutual understanding about which specific information must legally or ethically be disclosed (Lawrence & Kirpius, 2000). A counselor who asks a minor to sign paperwork, in addition to the parents, gives concrete evidence of inclusion, which lowers resistance. All clients should be given written information about limitations to confidentiality at intake. Accordingly, including a minor in the decision-making process whenever it is appropriate further strengthens recognition of the child's needs and rights. The counselor may be surprised at an adolescent's willingness to cooperate with providing information to other stakeholders such as a parent, court administrator, or juvenile justice staff when the need for disclosure is clarified. Counselors should attempt to establish a cooperative working agreement between individuals from the various systems in which a minor functions from the time of the first meeting. When a minor client and his or her parent are fully informed about probable requests from other stakeholders, cooperation in signing releases is more likely to follow, enabling collaboration and promoting utilization of all available resources.

It is the responsibility of the counselor to be aware of current laws as well as district policies if working in a school, both to provide the best client care and to protect his or her role as clinician (Isaacs & Stone,

1999). This can be accomplished through continuing education and active participation in professional organizations. When a dilemma arises about confidentiality, it is important to have established a network of peers for consultation, keep accurate and objective documentation, and to maintain adequate liability insurance coverage (Isaacs & Stone; Lawrence & Kirpius, 2000). Even though a counselor has integrity and is well grounded in ethical and legal knowledge, the uncertainties involved in working with adolescents in a complicated world necessitates planning for the negative while working hard to consistently maintain the positive.

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