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New Jersey School Counselors' Challenge Regarding the Counseling Relationship and Anti-Bullying Policies

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Abstract

New Jersey school counselors are appointed to serve students simultaneously in the roles of counselor and anti-bullying specialist (ABS). How the additional role impacts the counseling relationship for students is unknown. However, ethical guidelines suggest that having school counselors serve students in the ABS role can be detrimental to the counseling relationship. Understanding the challenge of dual roles for school counselors is a necessity in order to advocate for programs and services that empower students.

According to the United States Department of Education (U.S. DOE; 2008), children attend public school on an average of 6.22–7.17 hours a day, ranging from 171–184 days a year in the United States. During these hours, a student depends on all school stakeholders to assist in offering opportunities to learn and grow in preparation for a global economy (U.S. DOE, 2011). Schools consist of students, teachers, support staff, supportive services, administration, parent/guardian(s), as well as community involvement. In order to foster student success in which students are provided with the prospect to develop “self-concepts which enable them to face the world as secure, free, creative, and courageous persons” (Osman, 2012, p. 953), the school climate must include attributes such as respect, caring, high morale, and opportunities for input. Therefore, school districts need to enforce policies to safeguard a positive school environment for students.

An example of how school districts hope to protect the well-being of their students and support the empowerment of each student to reach their individual, full potential is by implementing anti-bullying policies. If bullying is occurring within a school, a positive school climate is compromised, which directly threatens positive student educational opportunities, such as learning. A negative school climate due to bullying behaviors can affect the self-concepts of the victim(s), bystander(s), and the

perpetrator(s). Victims of bullying suffer physically, mentally, and emotionally (Espelage & Swearer, 2003). Students who experience bullying while in school not only personally suffer, but their educational outcomes can be negatively impacted. Popp, Peguero, Day, and Kahle (2014) found individuals who have experienced bullying see a decrease in their academic achievement. As a result, it is the duty of the school district to combat bullying in order to protect their students' well-being.

State School Bullying Policy

Currently, in the United States, the U.S. Department of Education (DOE) reports that 46 states have bullying laws, but only 45 of those states request school districts to adopt bullying policies (Stuart-Cassel, Bell, & Springer, 2011). However, the U.S. DOE does not require consistency across state and/or district borders concerning how to protect the children within schools while successfully generating a climate which encourages learning. For example, three out of the 46 states that have anti-bullying policies report bullying as prohibited but do not define bullying behavior: (1) Arizona, (2) Wisconsin, and (3) Minnesota (Stuart-Cassel et al., 2011). Therefore, states which prohibit bullying but do not explain what bullying is, do not provide schools with a clear indication of how to properly protect their students. Yet, when a school district receives federal funding, if bullying is experienced by any student and/or staff member, the school district is legally required to respond. In Arizona, Wisconsin, and Minnesota, the task to protect the student can become difficult if the state does not establish what bullying is. Additionally, bullying definitions across districts within a state, as well as among states, can differ, which will affect how the victims are protected.

The Civil Rights Act of 1964 is a federal law that prohibits the discrimination of others through devaluing one person in comparison to another. Title VI of the civil rights legislation specifically protects individuals from being discriminated against based on race, color, or national origin. Title IX of the Education Amendments of 1972 further extended protection against discrimination on the basis of sex. Additionally, educational capacities as well as disabilities were federally protected from discrimination with the Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990. As a result, in the United States, if a school receives federal funds and a student is treated unjustly according to federal legislation, the school district is required to respond in order to safeguard the victim.

The U.S. Department of Education has found that the state of New Jersey's Anti-Bullying Bill of Rights Act (ABR; 2010) has the greatest extent of coverage and expansiveness compared to the other 49 states (Stuart-Cassel et al., 2011). The New Jersey anti-bullying policy covers 16 components, more than any other state, and these are: (1) purpose, (2) scope, (3) prohibited behavior, (4) enumerated groups, (5) district policy, (6) district policy review, (7) definitions, (8) reporting, (9) investigations, (10) written records, (11) consequences, (12) mental health, (13) communications, (14) training/prevention, (15) transparency/monitoring, and (16) legal remedies. In comparison, 16 states had between 13–15 of the components, 17 states only covered 9–12 components, and 11 states only addressed 5–8 of the areas (Stuart-Cassel et al., 2011). In the *Analysis of State Bullying Laws and Policies* for the year 2011 (Stuart-Cassel et al., 2011), the U.S. DOE believed that the state of New Jersey has developed one of the

model policies that best covered the U.S. Department of Education-identified key components of bullying laws and policies. Since, the U.S. DOE's mission is "to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access" (U.S. DOE, 2011, para. 1), it is important for public school employees to understand how the DOE's beliefs will impact schools across the country. Thus the understanding of New Jersey's anti-bullying policy will be extremely beneficial for school employees to understand since the U.S. DOE requires public schools to be accountable for protecting students. Furthermore, it is important to have school counselors across the country understand New Jersey's anti-bullying policy since the American School Counselor Association (ASCA; 2014) describes a school counselors' role as being an advocate for students. It is the ethical duty of school counselors to "notify appropriate officials of systematic conditions that may limit or curtail their effectiveness in providing programs and services" to students, ensuring and promoting students' well-being (ASCA, 2010, D.1.d). Within a school system, school counselors are responsible for understanding the students, their worldview, belief systems, and the culture of the community, in order to support and protect students' best interests. Thus, school counselors should be aware of the policies and programs affecting their students, as well as understanding the benefits and disadvantages, while advocating for the most effective processes supporting the empowerment and development of the students.

New Jersey Anti-Bullying Policy

In the state of New Jersey, Governor Christie signed the legislation for the Anti-Bullying Bill of Rights Act (ABR; 2010), on January 5, 2011, to provide school districts with new provisions to respond to violations of students' civil rights within schools. As of September 2011, each school district within the state of New Jersey had to adopt a new Harassment, Intimidation, and Bullying (HIB) Policy. The ABR required school districts to have an anti-bullying coordinator (ABC) and each school within the district an anti-bullying specialist (ABS), as well as a school safety team. New Jersey's ABR specifies that the school's principal must appoint either the school's guidance/school counselor, school psychologist, or another individual similarly trained as the ABS. According to the ABR, once a report of harassment, intimidation, or bullying is made to the school's principal, the principal will need to provide the ABS with an initial report from an individual who personally witnessed an act of HIB or received reliable information indicating that a HIB act occurred. Then the ABS will be required to begin an investigation which involves the victim(s), bystander(s), and the accused perpetrator(s). The principal may appoint other staff to assist the ABS with the investigation, but the ABS will lead the investigation and ultimately conclude if an act of HIB occurred. Additionally, the ABS is responsible to evaluate if the welfare of the student(s) is at risk. Next, the ABS will provide the principal with the conclusion of the case within a 10 day time frame from the initial report. At that point in time, the principal of the school will provide those involved with the outcome of the investigation and delegate consequences, if any, to those who were deemed to be guilty of partaking in a HIB behavior by the ABS.

New Jersey School Counselors' Role in Bullying Policy

In the state of New Jersey, not only are school counselors afforded the duty to provide prevention and intervention strategies to combat bullying within the school and promote a positive climate for the school, but they are often appointed as the ABS. The ABS appointed role requires school counselors to interview victims, bystanders, and the accused bully(ies)/perpetrator(s). Also, school counselors who are appointed as the ABS will have to evaluate the investigation to conclude if an act of HIB occurred and report the findings to their school's principal so that consequences can be given. According to the 2013 *New Jersey Anti-Bullying Task Force Annual Report* (New Jersey Anti-Bullying Task Force, 2014), 57.4% of the participants who stated their role as the school's ABS also defined themselves as the school's counselor. When referencing state anti-bullying policies, the U.S. DOE attests,

The state of New Jersey has one of the strongest counseling and intervention components written into law. It requires that policies articulate a range of possible responses to any identified incident of bullying, harassment, or intimidation, which "shall include an appropriate combination of counseling, support services, intervention services, and other programs. (Stuart-Cassel et al., 2011, p. 39)

To the contrary, ASCA (2013) asserts that school counselors should advocate for students while remaining a neutral and resourceful consultant and/or mediator. ASCA's view on discipline is that school counselors should not be perceived within a judgmental and/or disciplinary role because it can be detrimental to the counseling relationship.

According to ASCA (2014), a school counselor should be a resource to students for support in their academic achievement, personal/social development, and career development, in aspiration of helping students become productive and enduring citizens of the future. School counselors fulfill this duty by providing both direct and indirect services to students within a school. Schools counselors work directly with students by presenting and instructing students about core curriculum, establishing and exploring individual goals, and offering responsive services. ASCA (2014) does not describe the school counselor as having any investigatory roles.

ABS and School Counselor Ethical Considerations

When federally funded schools experience bullying and/or harassment that infringes on an individual's civil rights, schools are required to respond (Civil Rights Act of 1957/2009). But ASCA's *Ethical Standards for School Counselors* (2010) asserts that school counselors should "avoid dual relationships that might impair their objectivity and increase the risk of harm to students" (A.4.). The ABS role requires school counselors to make judgments about their students based on information received during investigations personally conducted. As a result, school counselors in the state of New Jersey who fulfill the ABS role are asked to disregard the ethical codes set forth for them, which are supposed to promote the welfare of their students. Additionally, the ABS role requires the school counselor to report to the principal if individuals are guilty of HIB and assert that the perpetrator(s) receive consequences. The school counselor will now have information pertaining to this student that will cloud the counseling relationship.

The American Counseling Association's (ACA) *Code of Ethics* (2014) section on Role Changes in the Professional Relationship states:

When counselors change a role from the original or most recent contracted relationship, they obtain informed consent from the client and explain the client's right to refuse services related to the change. Examples of role changes include but are not limited to . . . changing from an evaluative role to a therapeutic role, or vice versa; and changing from a counselor to a mediator role, or vice versa. Clients must be fully informed of any anticipated consequences (e.g., financial, legal, personal, therapeutic) of counselor role changes. (A.6.d.)

ACA has clearly established that the client can suffer due to dual roles. Within a school setting, the student may not have a choice to see another counselor. For example, there may only be one school counselor for the campus or the counselor sees students with certain last names and/or grade levels. Therefore, judgments will be made by both the student and school counselor/ABS during a HIB investigation which will impact future counseling relationships.

The New Jersey ABR Act asks school counselors who are appointed as the ABS to act as both a counselor and investigator for the same population. Even if the student does not agree to work with the counselor within the ABS role when the students are involved in a HIB investigation as a victim, perpetrator, or bystander, knowledge about the student in reference to the investigation will be shared with the school counselor. The principal may appoint another school staff member to complete the interview for the student, but the school counselor who is acting as the ABS will still need to make the final determination of the case and present the findings to the school principal. Therefore, the school counselor is still involved in an evaluative role in which the school counselor becomes knowledgeable about the student in regards to the HIB case. This can ultimately affect the objectivity of their school counselor role when working with the specific student(s).

Counselor objectivity is essential to providing the student with ethical practice that supports positive counseling progress. The most effective counseling environment to endorse client success is creating a therapeutic alliance between the counselor and client/student that fosters unconditional regard, non-judgment, respect for client counselor relationship, and confidentiality (Sharf, 2012). Such a relationship allows clients to believe the counselor's perception of the client is not skewed by other factors.

Approximately 30% of school-aged individuals admit to bullying others while 70.6% have witnessed someone else being bullied during school (Bradshaw, Sawyer, & O'Brennan, 2007). These statistics suggest the likelihood of school counselors who are also the ABS to have to exercise dual roles with a majority of the student population. As a result, it can be inferred that student-school counselor relationships are and will be compromised when the school counselor is also the ABS for the same caseload. Such interaction between students and school counselors impedes their welfare, which is considered unethical (ACA, 2014, A.1.a; ASCA, 2010, A.1).

Consider if a school counselor receives information about an individual in regards to two different environments: school counselor role and the ABS role. For instance, the school counselor may work with a student in regards to test anxiety. However, if the same student is involved in a HIB case for making harassing comments for being a geek to another student on Facebook as well as in the school hallways, information cannot be infiltrated into the other relationship setting. Therefore, the school counselor will not be able to discuss with the student how his/her test anxiety may have affected their actions

towards another student (e.g., jealousy of being smart). The ABS role requires the school counselors to not explore reasoning nor offer the student appropriate intervention strategies. The ABS can only determine if in fact the student performed an act of HIB per the school district's definition. The school counselor's conclusion would then be reported to the principal. If the ABS deems the student guilty, the school principal would then have to provide a consequence(s) for the act of HIB according to the ABR. Additionally, when the school counselor sees the student within the school counseling role, the discussion of the HIB case cannot be discussed within the counseling environment unless the student discloses (ACA, 2014, B.1.; ASCA, 2010, A.2.a). Therefore, both the student and the school counselor will have had experience with each other outside of the counseling relationship which threatens objectivity and, most importantly, the effectiveness of the counseling relationship.

Summary

When the New Jersey School Boards Association's director of legal, policy, and labor relations, Michael Kaelber, examined the effectiveness of the ABR, many shortcomings were found. Kaelber (2013) concluded that the school counselor and ABS role duties contradict one another. The ABS role was established as an investigatory role in which the ABS needs to be trained in age-based "investigatory" questioning techniques. According to the ABR, another certified staff member can be trained by the New Jersey Department of Education as the ABS. If the school counselor and ABS role are contradictory, why has New Jersey established that the school's principal should appoint the school's counselor and/or someone in a similar role to the additional position as the ABS? How can school counselors advocate to protect counseling relationships with their students? Since the U.S. DOE supports New Jersey's ABR as a model policy, what will this mean for future school counselors?

In order for school counselors to adequately advocate for their students, school counselors must stay current on legislation affecting their students. School counselors across the United States should be actively exploring the role of the ABS and its impacts upon the counseling relationships with students. Additionally, school counselors nationwide should educate others concerning the implications of having school counselors act as the ABS. Nelson Mandela once said, "Education is the most powerful weapon which you can use to change the world." In order to change the world of students, school counselors must start by advocating how school counselors can best service their students.

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