

Minor Students' Rights to Confidentiality, Self-Determination, and Informed Consent in Wisconsin

Nic Dibble, LSSW, CISW

Education Consultant

School Social Work Services

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Introduction

Within our society, minors do not have the same rights as adults. The NASW Code of Ethics does not distinguish between adult and minor clients. This is especially problematic for school social workers, since the vast majority of students are minors.

The NASW Code does afford clients the rights to privacy and confidentiality (1.07), self-determination (1.02), and informed consent (1.03). At the same time, the code speaks to a third party

- giving informed consent when the client lacks the capacity (1.03(c)), and
- authorizing the disclosure of confidential information (1.07(b)).

For a child, the parent is the third party that has the legal and moral responsibility to act in the child's best interests.

This prompts ethical questions that are fundamental to the practice of school social work:

- What are the rights of minor students to privacy and confidentiality, self-determination, and informed consent?
- How should school social workers consider the fundamental rights of parents to be informed of important activities their children are participating in?
- In what actions do parents need to be involved as third parties?
- Under what circumstances can and should school social workers share confidential, student-client information?
- How can school social workers make ethical decisions in the best interests of their clients when confronted with competing ethical values and interests?

This paper is intended to help Wisconsin school social workers balance minor students' rights to privacy and confidentiality, and their parents' rights, roles and responsibilities in an effort to improve outcomes for both students and families. It is designed to be used in conjunction with the NASW Code of Ethics as a reference (<http://www.socialworkers.org/pubs/code/code.asp>). Other relevant ethical guidance is included.

The Role of Families

One of the six fundamental values of the NASW Code of Ethics is the “Importance of Human Relationships.” The associated ethical principle is “Social workers recognize the central importance of human relationships.” More specifically:

Social workers understand that relationships between and among people are an important vehicle for change. Social workers engage people as partners in the helping process. Social workers seek to *strengthen relationships among people* in a purposeful effort to *promote, restore, maintain, and enhance the wellbeing of individuals, families, social groups, organizations, and communities.* (NASW, 2008)
[emphasis added]

Families form the foundation of human relationships for children. Ideally, these relationships mature as children grow into adolescence and adulthood. Regardless, parents have legal and moral rights, roles and responsibilities for their children, which cannot be exercised and fulfilled unless they are cognizant of their children’s activities and needs. School social workers often work to empower parents with the knowledge and skills to act in the best interests of their children.

The relationship between a school social worker and a student-client is generally short-term. The relationship between a family and a child is life-long or, at least, until the child reaches adulthood, unless there are extenuating circumstances. Social workers cannot replace family relationships and should support them, to the extent that they are in the best interests of the student-client.

At the same time, part of healthy child and adolescent growth includes the gradual development of autonomy from parents, in order to grow into independent adulthood. Schools are a structured and protected environment in which that autonomy is developed as students move through elementary, middle, and high school. As students grow older, they exercise more judgment and make choices and decisions separate from their parents. That autonomy must necessarily extend into the social worker-client relationship, including privacy and confidentiality, self-determination, and informed consent, if that relationship is to be successful.

School social workers’ practice decisions regarding students’ privacy can have long-term consequences related to the effectiveness of their practice. If a student believes that a school social worker shared personal information without the student’s consent, the student may choose to terminate services and may tell other students about this experience, leading to widespread mistrust of the school social worker in the student body. Similarly, if parents believe that a school social worker is withholding information the parents need to fulfill their roles and responsibilities as parents, community support for school social work services and the school district may be diminished (Glossoff & Pate, 2002). The school administration may be contacted by angry parents, resulting in administrative pressure to reduce students’ rights to confidentiality, self-determination, and informed consent when working with the school social worker and other pupil services professionals.

Legal Parameters

Schools are expected to act as surrogate parents during the school day, keeping students safe and acting in their best interests, a doctrine known as *In loco parentis* (Latin for “In place of

parents”). This doctrine is closely aligned with the NASW Ethical Standard of Commitment to Clients, but may conflict with the NASW Ethical Standard of Self-Determination. (See Page 12.)

The Family Educational Rights and Privacy Act (FERPA) clearly gives the decision-making rights regarding education records to parents of minor students. For instance, parents must give written, informed consent for education records to be shared outside of the school system (unless other provisions in the law authorize disclosure without consent). However, when a student turns 18 years of age, all rights related to education records transfer from the parent to the adult student. Wisconsin law (Wis. Stat. sec. 118.125) parallels federal law, in this regard.

Many areas of social work deal with minors as clients, including child welfare, substance abuse, mental health, and juvenile justice. However, Wisconsin, like most states, grants confidentiality and other rights to minors at certain ages for certain services, including:

- substance abuse assessment and treatment,
- mental health assessment and treatment,
- family planning services,
- HIV test results, and
- legal counsel in both juvenile and adult court proceedings.

These kinds of rights may be tied to the minor being a minimum age (12 or 14 years old), as determined in state law. Specific information about minors’ rights to confidential services in Wisconsin can be found at http://sspw.dpi.wi.gov/sspw_confid.

With the exception of Wis. Stats. sec. 118.125(1)(d)2. and 118.126 (see Appendix), Wisconsin does not grant similar legal privileges to students in schools. In that sense, school social work practice is more challenging than social work in the other systems. However, to the extent that school social workers provide parallel or similar services in schools, age guidelines established in law can serve as reference points in making ethical decisions about students’ rights to confidentiality, self-determination, and informed consent.

That being said, age should not be the sole determinant for school social workers seeking to ethically balance minor students’ rights to confidentiality and parents’ rights to direct the activities of their children. Children and adolescents vary widely in their levels of maturity and decision-making skills. Some may be adversely affected by abuse of alcohol or other drugs or may struggle with challenges to their mental health. Not to consider these factors, as well as age, could result in outcomes that are not in the best interests of the student-client or the family.

Personal records of educators are defined in both Wisconsin and federal law.

118.125 Pupil records.

(1) Definitions. In this section:

(d) "Pupil records" means all records relating to individual pupils maintained by a school but does not include any of the following:

1. Notes or records maintained for personal use by a teacher or other person who is required by the state superintendent under s. 115.28(7) to hold a certificate, license, or permit if such records and notes are not available to others.

Sec. 99.3 What definitions apply to these regulations?

Education records.

(b) The term does not include:

- (1) Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.

(Authority: 20 U.S.C. 1232g(a)(4))

Since personal records are excluded from the definition of pupil records (in state law) and education records (in federal law), parents have no legal right to obtain copies of these records.

Typically, school social workers do not share the substance of confidential student conversations with anyone else. Consequently, any summary record of counseling with students would not be available to parents. However, this provision in the law does not provide privileged communication to students in the specific manner as does Wis. Stat. sec. 118.126 regarding self-disclosed use of alcohol or other drugs (see Appendix).

In addition, Wisconsin law excludes psychological treatment records from pupil records.

118.125 Pupil records.

(1) Definitions. In this section:

- (d) "Pupil records" means all records relating to individual pupils maintained by a school but does not include any of the following:
 2. Records necessary for, and available only to persons involved in, the psychological treatment of a pupil.

The law does not define what constitutes psychological treatment in the school setting or who within schools is qualified to provide it. A school district may choose to establish these parameters within its local policy. For instance, a school district could reference federal law that defines a school counselor, psychologist, and social worker as a "school-based mental health provider" as the basis for establishing that these professions are qualified to provide psychological treatment in their schools (20 USC 2171. Sec. 4151(9)).

Since psychological treatment records are available only to people involved in the psychological treatment of the student, this information is not available to parents or other educators not involved in the psychological treatment of the student. In short, this statute can be used by local school districts to ensure students receiving psychological treatment, however the school district chooses to define this service, have privileged communication.

School social workers who are dually licensed or certified through the Department of Regulation and Licensing (DRL) are also held to the standards in Administrative Rule MPSW 20. The section below specifically addresses the disclosure of confidential client information.

MPSW 20.02 Unprofessional conduct. Unprofessional conduct related to the practice under a credential issued under ch. 457, Stats., includes, but is not limited to, engaging in, attempting to engage in, or aiding or abetting the following conduct:

- (10) Revealing facts, data, information, records or communication received from a client in a professional capacity, except in the following circumstances:
 - (a) With the informed consent of the client or the client's authorized representative;
 - (b) With notification to the client prior to the time the information was elicited of the use and distribution of the information; or

- (c) If necessary to prevent injury to the client or another person;
- (d) Pursuant to a lawful order of a court of law;
- (e) Use of case history material for teaching, therapeutic or research purposes, or in textbooks or other literature, provided that proper precautions are taken to conceal the identity of the client; or
- (f) When required pursuant to federal or state statute.

Similar to the NASW Code of Ethics, the administrative rule does not distinguish between adult and minor clients. However, the “authorized representative” of a minor child is the parent or guardian.

Both state and federal law related to student records allow confidential information to be disclosed in an emergency to protect the safety of students or other people.

118.125 Pupil records.

- (2) Confidentiality and disclosure of pupil records. All pupil records maintained by a public school shall be confidential, except as provided in pars. (a) to (p) and sub. (2m). The school board shall adopt policies to maintain the confidentiality of such records and may adopt policies to promote the disclosure of pupil records and information permitted by law for purposes of school safety.
- (p) A school board may disclose pupil records to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of any individual.

Sec. 99.31 Under what conditions is prior consent not required to disclose information?

- (a) An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by Sec. 99.30 if the disclosure meets one or more of the following conditions:
 - (10) The disclosure is in connection with a health or safety emergency, under the conditions described in Sec. 99.36.
 (Authority: 20 U.S.C. 1232g(a)(5)(A), (b), (h), (i), and (j)).

Under FERPA, disclosure is dependent upon the ability of school officials to identify “an articulable and significant threat to the health or safety of a student or other individuals.” Sec. 99.36 goes on to state, “If, based on the information available at the time of the determination, there is a rational basis for the determination, the Department will not substitute its judgment for that of the educational agency or institution in evaluating the circumstances and making its determination,” (20 U.S.C. 1232g (b)(1)(I) and (h)). FERPA regulations, including Sec. 99.36, can be found at http://www.access.gpo.gov/nara/cfr/waisidx_10/34cfr99_10.html.

These provisions should not be interpreted to authorize broad disclosures of confidential information. Rather, only the information necessary to immediately address the emergency should be disclosed and only to individual(s) who have the authority and capacity to intervene.

Informed Consent

Informed consent needs to be considered in both its ethical and legal contexts. Ethically, social workers are expected to obtain informed consent from their clients or their client’s authorized representative prior to providing services (1.03, 1.03(c)). From a legal standpoint, a minor is not considered capable of giving informed consent, and the assumption is that a parent must authorize services for a minor, unless otherwise specified in law. However, minors may certainly indicate assent or dissent to specific services or activities, consistent with their developmental maturity. That is, a student may choose to agree or disagree to participate in a proposed activity.

In addition, a student may initiate a contact with a school social worker with a request for information or services.

Advocates for Youth (2007) list three specific criteria for consent to be informed:

- Consent is given with understanding (i.e., the student knows the risks and alternatives),
- Consent is given with competence (i.e., the student is not too young, is not cognitively disabled or mentally ill), and
- Consent is given voluntarily (i.e., the student has not been coerced or misled).

If a student is not able to give consent consistent with these three criteria, this should lead the school social worker to the conclusion that parental consent (or other authorized third party) is necessary prior to the delivery of services.

Parents both explicitly and implicitly authorize their children to attend school and to be involved in school activities. Some special events may involve additional written parental consent (e.g., a field trip). For other kinds of activities, parental awareness of the availability of a school service or activity and their child's eligibility to participate may be sufficient. For instance, some high schools allow students to select and enroll in classes for the next semester without prior parental notification or consent.

At this point, it is important to review active vs. passive parental consent. Active consent involves notifying the parent of the proposed service to or for their child and obtaining the parent's written consent prior to beginning that service. Passive consent involves universally notifying all parents of the availability of a particular service (or a range of services) that are available to students and directs the parent to contact the school if the parent has any questions or does not want their child to access any of those services.

This is the same process FERPA and Wisconsin law outline regarding release of directory information. The school district notifies parents annually of:

- what information the school district has classified as directory information, and
- who to contact at the school if the parent does not want that information shared without consent.

If the school does not hear from the parent within two weeks after the notification, the assumption is the parent does not object to the release of the information without consent (20 U.S.C. 1232g(a)(5) (A) and (B), Wis. Stat. sec. 118.125(2)(j)).

Similarly, a school district could choose to notify parents annually:

- the school offers individual and small group counseling services by qualified pupil services professionals to students who are experiencing social-emotional-behavioral challenges that interfere with school performance, and
- who to contact at school if the parents do not want their child to access these services without prior parental consent.

Glosoff and Pate (2002) suggest school districts use a variety of methods to notify parents of available services, in order to help ensure parents are adequately informed (e.g., letters sent home, article in school newsletter, presentation at parent meetings, posting on school district

website). Multiple strategies of communication can help reduce the likelihood that parents may be surprised if they later learn that their child has chosen to seek out counseling from a school social worker or other pupil services professional.

Guidance from Professional Associations

The NASW Code of Ethics directs social workers to consider “...other relevant codes of ethics, recognizing that among codes of ethics social workers should consider the NASW Code of Ethics as their primary source,” (NASW, 2008).

The Ethical Standards of the American School Counselor Association (ASCA, 2010) include specific references to respect for the rights and responsibilities of parents, collaborative relationships with parents, sensitivity to diversity, and the balance of communication with parents vs. the confidential relationship with the student. See Appendix.

The Principles for Professional Ethics of the National Association of School Psychologists (NASP, 2010) include specific references to parental participation in discussions affecting their children, including designing interventions; specific exceptions to when informed parental consent is needed, including mature minors; referrals for alternative services; and access to protocols. See Appendix.

The NASW issued a Practice Update (2001) designed to provide practical direction to school social workers regarding sharing confidential information. One of the recommendations listed a number of questions to ask when considering disclosing information shared by a student-client:

- Why is it important that this information be shared?
- How will the student and the student’s family benefit by a decision to share or not share information?
- Does sharing the confidential information outweigh maintaining confidentiality?
- What will be the effect on the student’s learning?

Who is the Client?

NASW and the School Social Work Association of America (SSWAA) have issued position statements regarding school social work and client status.

NASW’s position statement (1991) lists multiple parties to whom school social workers have responsibilities (i.e., the student, parents, school colleagues, and the greater community) in any situation. The position statement specifically refers to all of these parties as clients.

The school social worker has ethical obligations to more than one client in any given situation. These clients include the student, parents, school personnel, and community. ...This multiplicity of clients contributes to the complexity of decision making about confidentiality for school social workers. ...The school social worker’s responsibility to maintain the students’ confidentiality must be balanced with the responsibility to the parents and to school administrators.

The SSWAA position statement (2001) acknowledges the school social worker’s responsibilities to the family and school-community but clearly gives more weight to the NASW Ethical Standards – Commitment to Clients (1.01) and Privacy and Confidentiality 1.07.

“Information should be shared with other school personnel only on a need-to-know basis and only for compelling professional reasons. Prior to sharing confidential information, school social workers should

evaluate the responsibility to and the welfare of the student. The responsibility to maintain confidentiality also must be weighed against the responsibility to the family and the school community. However, the focus should always be on what is best for the student.”

Kopels and Lindsey (2006) summarize the position statements by NASW, SSWAA, and the Illinois Association of School Social Workers (IASSW), which all discuss, in different ways, the school social worker’s responsibility not just to the student, but to the family, the school and the community, as well. Kopels and Lindsey argue that by considering the interests of these systems, other than the student, decision-making is further complicated, as their interests may be different and in conflict with each other. That is, if a school social worker has more than one client, whose interests does she/he elevate above the others?

Taken to the extreme, if a school social worker is able to cite her/his ethical responsibilities to all these different individuals and systems, then almost any decision to disclose (or not to disclose) confidential information to anyone could be ethically justified. At that point, decision-making is then reduced to being subject to the individual school social worker’s ethical preferences (or biases).

Raines and Dibble (2011) argue the student is the primary client, while others who will be affected by professional practice decisions (e.g., family, teachers, and administrators) are stakeholders to whom pupil services professionals have a secondary ethical obligation.

Practically, school social workers cannot ignore their legal and ethical responsibilities to their school district and students’ families. For instance, counseling may be included as a related service on a student’s Individualized Education Program (IEP). A student’s progress, including in counseling services, is reviewed and discussed at IEP meetings. Vague references to progress may not meet the requirements in the Individuals with Disabilities Education Improvement Act (IDEA) and related federal rules.

In order to determine how much information to share about counseling provided to a student, Glosoff and Pate (2002) recommend school social workers ask themselves two questions:

- Do IEP team members, including parents, need to know this?
- How will knowing this help the IEP team make decisions that will facilitate the student’s educational progress?

The 1991 NASW Position Statement referenced above also provides guidelines when sharing information at team meetings:

- Team members should be bound to maintain the confidentiality of the information.
- The student and family should agree to the sharing of the information with team members.
- The information shared should be necessary for the fulfillment of team educational objectives.
- The sharing of the information should be in the best interest of the student.

In addition, the 2001 SSWAA Position Paper states, “School social workers should inform students and parents that information gathered under the individualized education program (IEP) process may be shared with all members of the IEP Team.”

Voluntary Disclosure

Taylor and Adelman (1989) recommend empowering students to take the lead in sharing information. The authors identify these steps:

- Enhancing motivational readiness for sharing – Are there any advantages to the student to sharing the information? Are there any costs, either in the present or future, to not sharing the information?
- Enabling clients to share information – How can the student be empowered to share the information? What support does the student need?
- Minimizing negative consequences or disclosure – What can be done to minimize any costs related to disclosure?

Suggestions to Help Guide and Promote Ethical Practice

As is evident from this review, there is not universal agreement within the social work profession regarding how to balance the privacy rights of student-clients, the fundamental rights of parents to direct the activities of their minor children, and the competing interests of other stakeholders in the school-community. Regardless how client status is defined, however, it is clear that school social workers do have ethical and legal obligations to students, parents, their employer, and the community that cannot simply be dismissed to make ethical decision-making easier. A student's age, cognitive functioning, maturity, and mental health are also important considerations in a school social worker's decision-making regarding the rights of minor students.

Below are suggestions to help guide and promote the ethical practice of school social work with regard to student-client confidentiality, self-determination, and informed consent.

1. Utilize an ethical decision-making model to help resolve ethical challenges.

Everyone experiences challenging, ethical predicaments that are difficult to resolve. In these situations, it is helpful for a school social worker to have a decision-making model to help ensure that everything has been done to make the best, ethical decision in the best interests of the client. In addition, using an ethical decision-making model can help document all of the steps followed to come to the final decision (i.e., what information was gathered, whom was consulted with, what alternatives were considered, what was done to minimize adverse impacts, and why the final alternative was chosen).

2. Be familiar with relevant state and federal laws.

It is important to understand the statutes that govern the confidentiality of minors in the school and greater community. Clients and other stakeholders cannot be adequately informed of obligations and limitations related to confidentiality, unless the school social worker understands the legal parameters in this area. Federal laws include, at a minimum, FERPA and IDEA. State laws include, at a minimum, Wis. Stat. sec. 118.125 and 118.126, but Wis. Stat. sec. 146.81-84 (patient health care records) may be important, as well. An electronically-linked, comprehensive list of statutes related to pupil services practice can be found at http://sspw.dpi.wi.gov/sspw_sspwstats.

3. Work to establish appropriate local school district policies to help guide practice.

School district policies establish institutional parameters for expected student and employee behavior. These policies are then made public and are typically included in a school's

student handbook to help ensure students and families are aware of these guidelines. By establishing procedures that govern student confidentiality and appropriate information sharing, the school district is helping to inform all stakeholders and providing a measure of protection from individual liability for school staff, as long as they are acting consistent with the school district policy.

4. **Seek out creative, consensus, or compromise decisions that include all affected parties.**
When there are disagreements among the student, parents, and other stakeholders regarding confidentiality, look for solutions that all parties may agree to. For instance, if a student objects to sharing some information and the school social worker believes it is in his/her best interest to do so, try to help the student to understand the benefits of disclosure. If a disclosure is necessary, the client should be notified in advance, if feasible, of what will be disclosed, to whom, and why. See NASW Code of Ethics (1.07(d)).
5. **Take steps to proactively avoid ethical predicaments.**
That means making sure everybody (i.e., student, family, school colleagues, and representatives from community-based agencies) understands your ethical obligations and limitations. Clients must be informed before the onset of services that their right to confidentiality is not absolute and why. School colleagues must know that confidential information will be shared with them only to the extent they truly need this information to provide services to the student and family. This kind of prior notification will reduce misunderstandings with clients, families, and colleagues. See NASW Code of Ethics (1.07(e)). Another important strategy is to work to develop and earn the trust of clients and other stakeholders. To the extent that people trust and respect your work, it will be easier to avoid disagreements among parties.
6. **Continue to be involved in professional development opportunities that address issues related to privacy and confidentiality, self-determination, informed consent, rights of parents and guardians, and statutory guidance and privileges.**
All educators should be life-long learners and seek to improve their professional practice. To the extent we are able to improve our ability to balance the ethical responsibilities to our clients and the competing responsibilities we have to other stakeholders, we will be better school social workers.

Questions to Help Guide Ethical Practice

Social workers frequently experience ethical predicaments where two or more of the ethical standards in the NASW Code of Ethics come into conflict. Under these circumstances, a social worker must determine which ethical standard she/he will give more weight to in a given situation. It is important for the social worker to document the decision-making process and the reasons for the practice decision that is eventually made.

Relevant ethical standards are cited below in association with questions that are designed to help school social workers learn to better manage situations where the rights of minor students to confidentiality, self-determination, and informed consent may be in conflict with their parents' rights, roles, and responsibilities.

Ethical Principle: Social workers recognize the central importance of human relationships.

Social workers understand that relationships between and among people are an important vehicle for change. Social workers engage people as partners in the helping process. Social workers seek to strengthen relationships among people in a purposeful effort to promote, restore, maintain, and enhance the well-being of individuals, families, social groups, organizations, and communities (NASW, 2008).

Questions to ask when considering action (or inaction) which may conflict with this ethical principle are:

- How would disclosure affect the parent-child-family relationships?
- Would a failure to disclose interfere with the parents' fundamental and primary responsibility to provide food, shelter, clothing, health care, and safety for the student?

1.01 Commitment to Clients

Social workers' primary responsibility is to promote the well-being of clients. In general, clients' interests are primary. However, social workers' responsibility to the larger society or specific legal obligations may on limited occasions supersede the loyalty owed clients, and clients should be so advised. Examples include when a client has hurt another student or has threatened to harm self or others (NASW, 2008).

Questions to ask when considering action (or inaction) which may conflict with the ethical standard of Commitment to Clients are:

- Is the student proposing to do something that is not in his/her best interests? If yes, how adverse are the potential consequences? Would a parent be expected to prevent his/her child from this consequence?
- Are there any potential adverse consequences for any people other than the client?
- What potential liability might you be exposed to if the student or someone else is harmed?

1.02 Self-Determination

Social workers respect and promote the right of clients to self-determination and assist clients in their efforts to identify and clarify their goals. Social workers may limit clients' right to self-determination when, in the social workers' professional judgment, clients' actions or potential actions pose a serious, foreseeable, and imminent risk to themselves or others (NASW, 2008).

Questions to ask when considering action (or inaction) which may conflict with the ethical standard of Self-Determination are:

- Is the student competent to make reasonable and informed life decisions? Consider the student's age, cognitive functioning, maturity, and mental health.
- Would a parent be legally required to determine the course of action for a comparable or similar activity provided in the greater community?

1.03 Informed Consent

(a) Social workers should provide services to clients only in the context of a professional relationship based, when appropriate, on valid informed consent. Social workers should use

clear and understandable language to inform clients of the purpose of the services, risks related to the services, limits to services because of the requirements of a third-party payer, relevant costs, reasonable alternatives, clients' right to refuse or withdraw consent, and the time frame covered by the consent. Social workers should provide clients with an opportunity to ask questions.

- (c) In instances when clients lack the capacity to provide informed consent, social workers should protect clients' interests by seeking permission from an appropriate third party, informing clients consistent with the clients' level of understanding. In such instances social workers should seek to ensure that the third party acts in a manner consistent with clients' wishes and interests. Social workers should take reasonable steps to enhance such clients' ability to give informed consent (NASW, 2008).

Questions to ask when considering action (or inaction) which may conflict with the ethical standard of Informed Consent are:

- Is the student capable of giving informed consent to the proposed or suggested activity? Consider the student's age, cognitive functioning, maturity, and mental health.
- Would a parent be legally required to give informed consent to a comparable or similar activity provided in the greater community?

1.07 Privacy and Confidentiality

- (a) Social workers should respect clients' right to privacy. Social workers should not solicit private information from clients unless it is essential to providing services or conducting social work evaluation or research. Once private information is shared, standards of confidentiality apply.
- (b) Social workers may disclose confidential information when appropriate with valid consent from a client or a person legally authorized to consent on behalf of a client.
- (c) Social workers should protect the confidentiality of all information obtained in the course of professional service, except for compelling professional reasons. The general expectation that social workers will keep information confidential does not apply when disclosure is necessary to prevent serious, foreseeable, and imminent harm to a client or other identifiable person. In all instances, social workers should disclose the least amount of confidential information necessary to achieve the desired purpose; only information that is directly relevant to the purpose for which the disclosure is made should be revealed.
- (d) Social workers should inform clients, to the extent possible, about the disclosure of confidential information and the potential consequences, when feasible before the disclosure is made. This applies whether social workers disclose confidential information on the basis of a legal requirement or client consent.
- (e) Social workers should discuss with clients and other interested parties the nature of confidentiality and limitations of clients' right to confidentiality. Social workers should review with clients circumstances where confidential information may be requested and where disclosure of confidential information may be legally required. This discussion should occur as soon as possible in the social worker-client relationship and as needed throughout the course of the relationship (NASW, 2008).

Questions to ask when considering action (or inaction) which may conflict with the ethical standard of Privacy and Confidentiality are:

- Will the student disclose the information (with or without support)?
- Will the student consent to the disclosure?
- Are there compelling professional reasons for the disclosure against the student's wishes?

Concluding Comments

School social work practice is challenging and complex, in part because the majority of students in schools are minors. The NASW Code of Ethics does not distinguish between adult and minor clients. This can make it difficult to balance the rights of minor clients to confidentiality, self-determination, and informed consent and their parents' fundamental rights to choose courses of action for their children.

School social workers, like all social workers, have a primary responsibility to the client, but a variety of issues must be considered as well when working with minor students.

- What is the student-client's ability to make important life decisions?
- Could other students or other people be adversely affected by the student-client's actions or decisions?
- Does the parent need information in order to fulfill his/her legal and moral responsibilities to the student-client?
- Are certain courses of action required or prohibited under the law?
- Do the school district's policies dictate any courses of action?

This paper has sought to highlight the important issues in this area, provide suggestions, and pose relevant questions to guide school social work practice.

Questions and comments can be directed to Nic Dibble, Consultant, School Social Work Services, Wisconsin Department of Public Instruction, at (608) 266-0963 or nic.dibble@dpi.wi.gov.

Appendix

118.126 Privileged communications.

(1) A school psychologist, counselor, social worker and nurse, and any teacher or administrator designated by the school board who engages in alcohol or drug abuse program activities, shall keep confidential information received from a pupil that the pupil or another pupil is using or is experiencing problems resulting from the use of alcohol or other drugs unless:

(a) The pupil using or experiencing problems resulting from the use of alcohol or other drugs consents in writing to disclosure of the information;

(b) The school psychologist, counselor, social worker, nurse, teacher or administrator has reason to believe that there is serious and imminent danger to the health, safety or life of any person and that disclosure of the information to another person will alleviate the serious and imminent danger. No more information than is required to alleviate the serious and imminent danger may be disclosed; or

(c) The information is required to be reported under [s. 48.981](#).

(2) A school psychologist, counselor, social worker or nurse, or any teacher or administrator designated by the school board who engages in alcohol or drug abuse program activities, who in good faith discloses or fails to disclose information under [sub. \(1\)](#) is immune from civil liability for such acts or omissions. This subsection does not apply to information required to be reported under [s. 48.981](#).

History: 1979 c. 331; 1985 a. 163; 1987 a. 188, 339.

Ethical Standards for School Counselors

American School Counselor Association (2010)

<http://asca2.timberlakepublishing.com/files/EthicalStandards2010.pdf>

B.1. Parent Rights and Responsibilities

Professional school counselors:

- a. Respect the rights and responsibilities of parents/guardians for their children and endeavor to establish, as appropriate, a collaborative relationship with parents/guardians to facilitate students' maximum development.
- b. Adhere to laws, local guidelines and ethical standards of practice when assisting parents/guardians experiencing family difficulties interfering with the student's effectiveness and welfare.
- c. Are sensitive to diversity among families and recognize that all parents/guardians, custodial and noncustodial, are vested with certain rights and responsibilities for their children's welfare by virtue of their role and according to law.
- d. Inform parents of the nature of counseling services provided in the school setting.
- e. Adhere to the FERPA act regarding disclosure of student information.
- f. Work to establish, as appropriate, collaborative relationships with parents/guardians to best serve student.

B.2. Parents/Guardians and Confidentiality

Professional school counselors:

- a. Inform parents/guardians of the school counselor's role to include the confidential nature of the counseling relationship between the counselor and student.
- b. Recognize that working with minors in a school setting requires school counselors to collaborate with students' parents/guardians to the extent possible.
- c. Respect the confidentiality of parents/guardians to the extent that is reasonable to protect the best interest of the student being counseled.
- d. Provide parents/guardians with accurate, comprehensive and relevant information in an objective and caring manner, as is appropriate and consistent with ethical responsibilities to the student.
- e. Make reasonable efforts to honor the wishes of parents/guardians concerning information regarding the student unless a court order expressly forbids the involvement of a parent(s). In cases of divorce or separation, school counselors exercise a good-faith effort to keep both parents informed, maintaining focus on the student and avoiding supporting one parent over another in divorce proceedings.

Principles for Professional Ethics

National Association of School Psychologists (2010)

http://www.nasponline.org/standards/2010standards/1_%20Ethical%20Principles.pdf

Principle I.1. Autonomy and Self-Determination (Consent and Assent)

School psychologists respect the right of persons to participate in decisions affecting their own welfare.

Standard I.1.1

School psychologists encourage and promote parental participation in school decisions affecting their children (see Standard II.3.10). However, where school psychologists are members of the school's educational support staff, not all of their services require informed parent consent. It is ethically permissible to provide school-based consultation services regarding a child or adolescent to a student assistance team or teacher without informed parent consent as long as the resulting interventions are under the authority of the teacher and within the scope of typical classroom interventions. Parent consent is not ethically required for a school-based school psychologist to review a student's educational records, conduct classroom observations, assist in within-classroom interventions and progress monitoring, or to participate in educational screenings conducted as part of a regular program of instruction. Parent consent is required if the consultation about a particular child or adolescent is likely to be extensive and ongoing and/or if school actions may result in a significant intrusion on student or family privacy beyond what might be expected in the course of ordinary school activities. Parents must be notified prior to the administration of school- or classroom-wide screenings for mental health problems and given the opportunity to remove their child or adolescent from participation in such screenings.

Standard I.1.2

Except for urgent situations or self-referrals by a minor student, school psychologists seek parent consent (or the consent of an adult student) prior to establishing a school psychologist–client relationship for the purpose of psychological diagnosis, assessment of eligibility for special education or disability accommodations, or to provide ongoing individual or group counseling or other nonclassroom therapeutic intervention.

- It is ethically permissible to provide psychological assistance without parent notice or consent in emergency situations or if there is reason to believe a student may pose a danger to others; is at risk for self-harm; or is in danger of injury, exploitation, or maltreatment.
- When a student who is a minor self-refers for assistance, it is ethically permissible to provide psychological assistance without parent notice or consent for one or several meetings to establish the nature and degree of the need for services and assure the child is safe and not in danger. It is ethically permissible to provide services to mature minors without parent consent where allowed by state law and school district policy. However, if the student is not old enough to receive school psychological assistance independent of parent consent, the school psychologist obtains parent consent to provide continuing assistance to the student beyond the preliminary meetings or refers the student to alternative sources of assistance that do not require parent notice or consent.

Standard I.1.5

School psychologists respect the wishes of parents who object to school psychological services and attempt to guide parents to alternative resources.

Principle II.3. Responsible Assessment and Intervention Practices

School psychologists maintain the highest standard for responsible professional practices in educational and psychological assessment and direct and indirect interventions.

Standard II.3.10

School psychologists encourage and promote parental participation in designing interventions for their children. When appropriate, this includes linking interventions between the school and the home, tailoring parental involvement to the skills of the family, and helping parents gain the skills needed to help their children.

- School psychologists discuss with parents the recommendations and plans for assisting their children. This discussion takes into account the ethnic/cultural values of the family and includes alternatives that may be available. Subsequent recommendations for program changes or additional services are discussed with parents, including any alternatives that may be available.
- Parents are informed of sources of support available at school and in the community.

Principle II.5 Responsible Use of Materials

School psychologists respect the intellectual property rights of those who produce tests, intervention materials, scholarly works, and other materials.

Standard II.5.1

School psychologists maintain test security, preventing the release of underlying principles and specific content that would undermine or invalidate the use of the instrument. Unless otherwise required by law or district policy, school psychologists provide parents with the opportunity to inspect and review their child's test answers rather than providing them with copies of their child's test protocols. However, on parent request, it is permissible to provide copies of a child's test protocols to a professional who is qualified to interpret them.

Standard II.5.3

School psychologists recognize the effort and expense involved in the development and publication of psychological and educational tests, intervention materials, and scholarly works. They respect the intellectual property rights and copyright interests of the producers of such materials, whether the materials are published in print or digital formats. They do not duplicate copyright-protected test manuals, testing materials, or unused test protocols without the permission of the producer. However, school psychologists understand that, at times, parents' rights to examine their child's test answers may supersede the interests of test publishers.

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