

NASW COMMISSION ON EDUCATION**POSITION STATEMENT****THE SCHOOL SOCIAL WORKER AND CONFIDENTIALITY**

The members of the National Association of Social Workers affirm their belief in the fundamental values of the social work profession, including the worth, dignity, and uniqueness of all persons. This position statement offers general principles to guide conduct and the judicious appraisal of conduct in situations involving the school social worker and confidentiality.

In matters of confidentiality, law and ethics reinforce each other. Law ensures that the client's rights are guaranteed against those who do not act from ethical motives; ethics guarantees that the institutional conscience will transcend law and attend to obligations, whether guaranteed by law or not.

ETHICAL ISSUES

The duty to keep information confidential is governed by ethics. School social workers respect the privacy of the people they serve and use the information they gather in professional relationships in a responsible manner, as called for in the NASW (1990) *Code of Ethics*. Confidential information may be defined as information communicated to the school social worker for specific purposes relating to the service requested or received from the school; the information is communicated with the expectation that it will be kept confidential by the school and all of its personnel. Assurance of confidentiality is important because it enables people to seek help without fear of such results as stigma, retaliation, disapproval, or damage to other relationships. Confidentiality encourages both full disclosure, which is essential for effective treatment, and the maintenance of trust, the means by which treatment is effected.

LEGAL ISSUES

Privileged communication is a legal right, existing by statute or common law that protects the client from having his or her confidences revealed publicly from the witness stand during legal proceedings. Certain professionals thus cannot legally be compelled to reveal confidential information they received from their clients. The privilege protects the client, and the right to exercise the privilege belongs to the client, not to the professional. Privileged communication has been granted to clients of licensed social workers in most states. John Wigmore (1961), a prominent legal authority on evidence, set out four conditions that are generally accepted as being necessary for a communication to be considered privileged:

1. The communication must originate in the confidence that it will not be disclosed.
2. The element of confidentiality must be essential to the full and satisfactory maintenance of the relationship between the parties.
3. The relationship must be one that in the opinion of the community ought to be fostered.
4. The injury to the relationship caused by disclosure must be greater than the benefit gained through disclosure for the correct disposal of litigation (Promislo, 1979).

Privileged communication statutes do not always provide absolute protection against disclosure of confidential material in legal actions. There are many exceptions and loopholes. Without privileged communications coverage, there is no legal backing to enable a social worker to carry out his or her professional obligation to maintain confidentiality of client information. However, in some situations, confidentiality may be preserved

even without the protection of privileged communication statutes, especially if a communication meets Wigmore's four criteria and if a court is prepared to be guided by those criteria. School social workers must research the laws in their own states to become familiar with their responsibilities and limitations concerning confidentiality, and they should advise their clients about the limits of confidentiality, as they understand them. Many factors may limit confidentiality in a particular situation, including legal constraints, ethical imperatives, and school policy requirements. Other limitations may flow from prior obligations to third parties or prior understanding with clients (for example, that certain behaviors will in fact be reported). In the event of legal proceedings, the school social worker should notify the school administrator and the client and should consult legal counsel.

WHEN ETHICS AND LAW CONVERGE

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. Jankovic (1979) emphasized that "the school *serves in loco parentis*, and shares with parents the legal responsibility for the child" (p. 6). This multiplicity of clients contributes to the complexity of decision making about confidentiality for school social workers. When minors, parents, and school personnel are involved, there are many concerns about the sharing and withholding of information. The school social worker's responsibility to maintain the students' confidentiality must be balanced with the responsibility to the parents and to school administrators. Inadequate policies and procedures can result in serious ethical dilemmas. School social workers should therefore encourage administrators to

- Develop written policies regarding confidentiality in their school system
- Ensure that all school personnel and interns receive training regarding confidentiality
- Enforce confidentiality guidelines.

School social workers should also be familiar with federal, state, and local laws and school district

policies that clarify responsibilities related to confidentiality in specific situations. Where necessary, school social workers should advocate for appropriate legislation regarding confidentiality.

CONFIDENTIALITY GUIDELINES IN SPECIFIC SITUATIONS

Informed Consent

Informed consent means that the school social worker must involve the student and family in a decision to disclose confidential information. (Informed consent does not apply in situations involving suspected child abuse or threatened harm to self or others.) The student and family must understand exactly what it is they are consenting to, to whom the information will be disclosed and for what purposes, and what assurances (if any) the social worker can give regarding limiting the use or further dissemination of the information. When the school social worker begins working with a client, the worker should inform the client about the limits of confidentiality, and the two should negotiate ground rules regarding the sharing of information with the family, with the school, and with other agencies. When information is requested by outside agencies, the following guidelines apply:

- The request for information must be in writing
- The request must state specifically what data are being sought and for what purpose.
- The client must be informed of the request, and his or her permission must be obtained for disclosure.
- The agency releasing the information must include a statement of rules the receiving party must follow to maintain the confidentiality of the material.

Interviewing Children

Berman-Rossi and Rossi (1990) provided the following practice guidelines for involving children in making decisions about confidentiality:

- In initial stages of work with children, the social worker should orient them to their rights on a level that they can understand. . .
- As part of a contracting process, the social workers should offer a clear functional statement explaining efforts on the child's behalf. It would be ideal if the child understood that the social worker normatively speaks with other staff to help the child make better use of his or her school experience. It should be clear to the child that she or he can request specifically that particular material not be shared with others.
- When a child wants to share something, the social worker should try to discern the level of confidentiality that the child is seeking. Clinical judgment is extremely important in seeking directives for action. The worker should be careful not to guarantee confidentiality to the child in cases of neglect or abuse....
- Whenever signed permission is required from a parent, the worker should ask the child to sign too. Signatures should be requested for very specific reasons.
- With rare exceptions, the worker should discuss requests for information from other school personnel with the child, giving reasons for their concern. Also, the worker should encourage the requesting party to inform the child of his or her action.
- The social worker should inform the child about meetings on his or her behalf and invite him or her to help determine what information will be important to share (p. 203).

Child Abuse and Neglect

All 50 states have statutes mandating that professionals identify and report suspected child abuse and neglect. Each school district must establish clear policies and procedures in consultation with school administrators, teachers, support staff, parents, child protective service workers, police representatives, and representatives of community organizations. The guidelines should include confidentiality safeguards for the reporting professional in relation to the reporting process and appropriate follow-up.

Substance Abuse

Several federal laws guarantee strict confidentiality to youths receiving alcohol and drug abuse services. School-based substance abuse programs, with the exception of classroom education programs, must conform to these federal guidelines. State laws vary considerably in relation to age and parental involvement requirements when youths receive substance abuse services. School districts should establish guidelines to clarify the parameters of confidentiality guaranteed to the student and the responsibility of the school social worker regarding the involvement of appropriate resources, including the family or law enforcement officials.

Intended harm to Self or Others

School social workers are not bound to keep information confidential when clients discuss intent to harm themselves or someone else. Clinical judgment is extremely important in such cases. Guidelines to assist school system personnel in dealing with suicide and with suicidal threats, gestures, and ideation should be established in consultation with administrators, teachers, support staff, parents, police, and mental health and medical resources. The case of *Tarasoff v. Regents of the University of California* (1976) imposed an affirmative duty on therapists to warn a potential victim of intended harm by the client, stating that the right to confidentiality ends when the public peril begins. This legal decision set and affirmative duty precedent in cases of harm to others that is generally accepted within the social work profession.

Health

Some state laws now guarantee minors the right to be treated for sexually transmitted diseases and to receive pregnancy-related services under promise of confidentiality, particularly in relation to their parents. Family planning services and general health care also come under this mandate in some states. School social workers should be aware of the laws regarding the confidentiality of health services to minors in their state.

Social History

Before beginning the social developmental assessment interview, the school social worker should discuss with the family their rights related to confidentiality. During the interview, family members may reveal private information that may be within the purview of casework services but that is not pertinent to the educational evaluation. If this occurs, the social worker is bound by rules of confidentiality and privilege unless this information reveals a potential danger to the client or others. The assessment report should be educationally relevant. All social history documents should include a statement that the information recorded is confidential.

Maintenance of and Access to Records

Schrier (1980) suggested that every agency “designate responsibility for managing its record system to an individual and institute such safeguards to security as locked files and requirements for verifying the identity of persons releasing and requesting information” (p. 455). *Intraagency* information sharing should be limited to staff members who need the information to perform their duties. *Interagency* information sharing must follow informed consent guidelines. Staff and parents should be informed periodically of the policies and procedures governing the release of confidential records, including the obligation of the recipient to maintain the confidentiality of the information. The Family Educational Rights and Privacy Act of 1974 (Public Law 93-380), popularly known as the Buckley Amendment, gives parents and students the right to have access to school records, to challenge the accuracy of the records, and to insert modifications. School social workers should familiarize themselves with this law and support its intent within school policies and procedures.

Team Issues

Ethical conflicts regarding confidentiality can arise based on the school social worker’s multiple responsibilities to the student and family and to the members of the multidisciplinary team. It is only by identifying with the student and family

and with the team that the social worker can help them work better with each other. The following guidelines should govern the sharing of information:

- 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.

Research

People desiring access to confidential information for research purposes may come from inside or outside the school setting. Guidelines should require all researchers, including employees, to submit a written proposal to an administrator or committee for authorization. This proposal should outline the purposes of the study and the specific information desired. Records can be released to the researcher without client permission if the researcher has provided adequate written assurance that the record will be used as a statistical research or reporting record and if the record is transferred in a form that does not identify the individual. When a record containing identifying information is to be transferred, the client’s permission must be obtained.

ETHICAL DECISION MAKING

Of necessity, ethical codes are framed in general terms. Principles often contradict one another when applied to specific situations. Ethical dilemmas will arise in situations for which specific rules are not available. Such dilemmas contain conflicting values that confront professionals with competing claims. According to Joseph’s (1985) model, ethical decision making involves six steps:

1. expressing a dilemma as one good versus a competing good

2. compiling background data (facts, laws, codes)
3. clarifying the values associated with each good
4. placing the values in order of their importance
5. formulating the options available
6. choosing the option that reflects the most important values.

School social workers must be able to engage in systematic value reflection and ethical analysis. A core knowledge of basic ethical concepts and theory is important for a rigorous analysis of ethical options.

CONCLUSION

The concept of confidentiality as it applies to school social work practice is complex. All social work practice is affected by federal and state laws, and school social workers, as employees of the school, have responsibilities and obligations to the educational system as well as to students and families. Maintaining confidentiality and sharing relevant information in the best interests of the child is both an ethical responsibility and a legal obligation. When school social workers must make difficult and sensitive judgments relating to confidentiality, it is essential that they be thoroughly familiar with applicable legal regulations and that they employ an ethical decision-making model.

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