



To tell or not to tell: The fine line between minors' privacy and others' right to know

Working with children and adolescents can be tremendously rewarding because early intervention can stave off a multitude of major issues down the road. Minors do not always make for the most communicative of clients, however, and sometimes counselors find themselves at a loss for how to move teens past their knee-jerk “I don’t know” responses to get to the real work that needs to be done.

As is the case with all clients, the establishment of trust is crucial when working with minors. One way a counselor can build that trust is by not telling others — especially parents — every last detail of what was said in a counseling session. Trust can take weeks or even months to build, but it can be shattered in a moment — and possibly forever.

Counselors working with children and adolescents in any setting often find it challenging to balance their obligation to keep private the information disclosed in confidence to them with others' right to know. Professional school counselors are no exception, and in addition to having to answer to parents, they also have obligations to others, including teachers, building administrators, school districts, school boards and the community.

Fielding requests for confidential information

Over the course of a single day, school counselors may have to carefully navigate requests for confidential student information from others. Sometimes the pressure can feel overwhelming. What complicates the situation is that the legal right to confidentiality usually resides with parents and guardians, not with students, although counselors have an ethical duty to maintain students' privacy.

Once a relationship of trust has been established with the counselor, students may reveal information that they absolutely do not want getting back to

their families. This information may range from the seemingly benign, such as secretly wanting to be a stand-up comedian rather than taking over the family business, to more serious issues such as drug use, sexual activity or breaking the law.

It is understandable and natural for parents to want to know personal details about their children. Often, the motivation is well-meaning, such as wanting to better protect their children. Chances are great that if the counselor is hearing one-word answers to his or her questions to the student, so are the student's parents, which make them all the more driven to find out what their child really thinks and feels. Indeed, parents could rightfully complain to the principal, or even the school board, should they discover that the school counselor was privy to prior crucial information that might have enabled them to intervene before serious consequences occurred.

In addition, sometimes parents distrust the counseling process and are fearful that family secrets will be uncovered in the counseling session. They may even have instructed their child not to talk about such topics as an impending divorce or an incarcerated parent, perhaps because they fear they will be judged by the counselor or that the counselor will share this information with others. More recently, in light of changes to immigration policies, parents have become particularly guarded around school officials when it comes to discussions about their immigration status or that of their children.

In addition to parental pressure to disclose the content of counseling sessions, principals and others in the school building may request that counselors reveal information shared in confidence that could incriminate a student for breaking school rules or being involved in illegal activity on or outside of school property. Principals may insist that counselors reveal any information they have learned

about underage drinking parties taking place off campus or possible gang activity in the school district. They might insist that counselors report the HIV status of students, making the argument that school safety is at stake.

Counselors may be tempted to breach confidentiality for fear of being written up by an administrator, but in doing so, they run the risk of destroying any trust that they have built with these students. Students may choose never to share private information with the counselor again. As a result, they may lose the only adult figure in their lives to whom they can turn to get a perspective that is different from that of their peers. Furthermore, other students may also lose trust in the counselor as news of the breach of confidentiality “gets around.”

Judgment calls

Of course, even when they are *not* being asked to tell someone else what a student has shared in confidence, counselors must still make those judgment calls depending on the nature of what the student has disclosed. Sometimes the decision is made for them. For example, it is mandatory for counselors and other school personnel to report all suspected cases of child abuse and neglect, with or without proof.

Most counselors are well-versed in the “classic” reasons that they must breach confidentiality, likely because these reasons are emphasized in almost every counseling graduate program and are found in most ethical codes. The 2014 *ACA Code of Ethics* highlights the need to breach confidentiality when counselors are ordered by a court or when protecting counselees or identified others from “serious and foreseeable harm.” Many states and school systems have gone a step further and have designed strict protocols that counselors must follow in special circumstances, such as when they learn that a student is suicidal. These exceptions to confidentiality must

be communicated to students early and often, along with making them aware that sometimes the counselor will need to share information with parents. School counselors must be particularly adept at explaining these limits to confidentiality without using such a heavy-handed approach that students are afraid to share anything of a personal nature.

As straightforward as these exceptions may seem, in reality they can be tricky. For example, “serious and foreseeable harm” may differ from one student to the next. It must be looked at in a context that considers a minor’s developmental and chronological age, as well as the exact nature of the threat and the setting (e.g., on or off of school property). For instance, there may be a difference in the way a counselor handles a fifth-grader who confides that he sometimes drives his uncle’s motorcycle as compared with a senior in high school who tells the counselor the same thing.

Checking the ethical codes, following an ethical decision-making model and consulting with appropriate school personnel or others are key when choosing a course of action. The necessity for consultation becomes even greater when circumstances are less straightforward, often requiring the counselor to balance student privacy with the needs of parents, the school and the community. For example, counselors may be unsure how to respond when students reveal that they have been intercepting report cards and interim progress reports sent home in the mail. Or that they have been skipping sixth period to go smoke near the fence at the back of school property. Or that they’ve spray-painted the school water tower with their graduation year as a senior prank. To tell or not to tell?

Even the decision “to tell” is not the end of the story, however. Should counselors believe that it is necessary for them to breach student confidentiality, they must do everything in their power to limit the disclosure and educate the parties concerned about the benefits of maintaining student confidentiality. In a perfect world, the counselor would have already introduced parents to the counseling program, the role of the counselor and the importance of confidentiality as a means of building trust with students. Again, in a perfect world, the counselor would have already informed students about the limits of confidentiality and would have made an

extra effort to let the student know about any breach before it was made. After explaining the rationale for the breach, the counselor might want to share with the student the exact content of the information to be released and might even seek input from the student concerning which details should be left in or out.

Diverse populations

Decisions regarding confidentiality may become even more complicated when working with diverse populations, and counselors must be especially mindful of being culturally sensitive when explaining the purpose of confidentiality in the schools. When working with parents with limited English proficiency, the potential for misunderstanding is greatly increased. Consider the following scenario:

Maritza is brand new to your high school, having recently moved here from Nicaragua. You have noticed that she sits by herself in the cafeteria, and teachers have been telling you that she doesn’t seem to have any friends in her classes.

After a few weeks of sending passes for her to come to your office, she finally makes it to the counseling suite. She tells you that she is having a hard time adjusting to life in

America and that she is fearful someone will send her back to her county.

A few days later, at Back to School night, you see Maritza sitting next to her father. You are excited to meet him, so you walk over, introduce yourself as Maritza’s school counselor and say, “I’ve heard so much about you from your daughter.”

Maritza’s father immediately bristles, then turns to his daughter and demands to know what she has been saying to you. Maritza begins to cry, and the father sharply tells you, “In our family, we don’t tell strangers our business. Tell me what she has been telling you!” To tell or not to tell?

Counselors may find that managing difficult ethical dilemmas will bring the need for counselor advocacy to the forefront so that issues can be addressed not only from an individual level but also from a systemic level. The advocacy role for counselors is highlighted in the 2014 *ACA Code of Ethics* in Standard A.7.a.: “When appropriate, counselors advocate at individual, group, institutional and societal levels to address potential barriers and obstacles that inhibit access and/or the growth and development of clients.”

Several avenues of advocacy seem possible

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that would help Maritza and all other Latino/a newcomer families in the building. For example, counselors could plan a summer orientation to introduce newcomer families to one another and to families that have resided in the United States for a longer time. Counselors could use this opportunity to help newcomer families become more comfortable with the school, including giving a detailed explanation of the school counseling program and the role of school counselors.

Conclusion

School counselors must keep in mind that the legal right to confidentiality usually belongs to the parents and guardians of minors and not to the minors themselves. Counselors may also find that their ability to protect student privacy is limited by school or district policy. However, counselors have an ethical obligation to keep information disclosed by students confidential whenever possible. After all, trust is one of the hallmarks of developing an effective counselor-student relationship.

Whenever counselors are asked to disclose sensitive information and are unsure how to proceed, they should first consult the ethical codes, follow a sound

ethical decision-making model and seek consultation regarding a course of action. They should try to educate the requester about the negative consequences that might result from a breach of confidentiality, including possible irreparable damage to the counseling relationship. If there is no choice, the counselor should limit the information shared and try to let the student know beforehand what the counselor is going to say. Ideally, the counselor would have already explained the limits of confidentiality to students — both early and frequently in the counseling process — to increase the likelihood of keeping the counseling relationship intact.



For additional information, consult the following standards in the 2014 *ACA Code of Ethics*:

- ❖ A.1.a. Primary Responsibility
- ❖ A.2.c. Developmental and Cultural Sensitivity
- ❖ A.7.a. Advocacy
- ❖ A.7.b. Confidentiality and Advocacy
- ❖ B.1.a. Multicultural/Diversity Considerations

- ❖ B.1.b. Respect for Privacy
- ❖ B.1.c. Respect for Confidentiality
- ❖ B.1.d. Explanation of Limitations
- ❖ B.2.a. Serious and Foreseeable Harm and Legal Requirements
- ❖ B.2.d. Court-Ordered Disclosure
- ❖ B.2.e. Minimal Disclosure
- ❖ B.5.b. Responsibility to Parents and Legal Guardians
- ❖ I.1.b. Ethical Decision Making ❖

Nancy Carlson is both a certified K-12 school counselor and a licensed clinical professional counselor. She worked in the Montgomery County (Maryland) Public Schools for more than 30 years, was a counselor educator and now serves as the counseling specialist for the American Counseling Association. Contact her at ncarlson@counseling.org.

Letters to the editor:
ct@counseling.org

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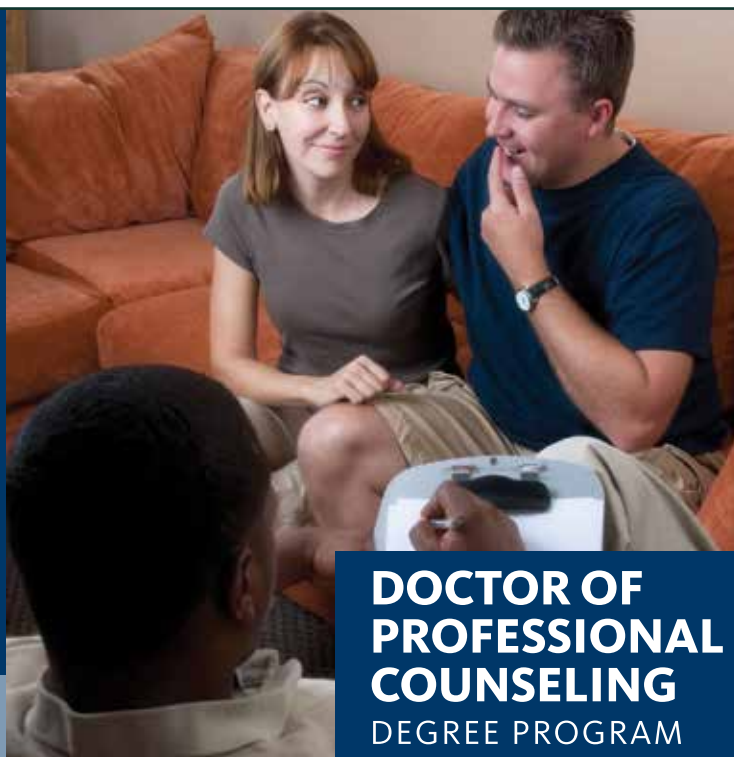
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