

The COMPLICATIONS of Working with Minors in a School Setting
(Stone, 2005; 2010; 2013)

COUNSELOR’S VALUES

We are our values. We are not able to leave our values at the school house door. However, professional schools counselors are aware of those value-laden issues for which they cannot be objective (our hot buttons) and we avoid working with students who are in the throes of a situation involving our hot buttons. For example, if a school counselor is vehemently opposed to abortion, then s/he recognizes this and refers a student who is seeking help on this topic to another professional. It is unethical for us to impose our values on our students in value-laden controversial topics. Our ethical imperative guides us to promote the autonomy and independence of our students.

Grossman v. Southshore Community School District

OBLIGATIONS BEYOND THE STUDENT

We owe our students a trusting relationship. The ASCA Ethical Standards dictate that school counselors have a primary obligation and loyalty to students. Yet, we also have an obligation to parents, teachers, administrators, the school district, and the community. School counselors respect students’ confidences and balance the rights of minors with the rights of their parents. The ambiguity of protecting students’ trust in their school counselor and promoting students’ autonomy while respecting parental rights to be the guiding voice in their children’s lives is a daily struggle. Parents are continually vested by our courts with legal rights to guide their children (Bellotti v. Baird, 1979; H. L. v. Matheson, 1981).

The COMPLICATIONS of Working with Minors in a School Setting

Counselor’s Values

Obligations Extend to Parents and Other Educators

Minors’ Developmental and Chronological Levels

Privacy Rights of Minors

Legal Status of Minors

In Loco Parentis

Community and Institutional Standards

Academic Instruction

Trusting Relationship

Informed Consent

Opacity of Laws and Ethical Codes

Number of Students

Standard of Care

In *H. L. V. Matheson*, The Supreme Court Of The United States said "constitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society." The Supreme Court emphasized that there are three reasons why parents are the guiding voice in their children’s live:

1. The peculiar vulnerability of minors to make life altering decisions;
2. A minor's inability to make informed, competent decisions, particularly under emotional stress; and,
3. The concept that parents are the guiding voice in their child's life.

Bellotti v. Baird

We have recognized that parents have an important "guiding role" to play in the upbringing of their children, *Bellotti II, supra*, at 633-639, which presumptively includes counseling them on important decisions.

MINORS' DEVELOPMENTAL AND CHRONOLOGICAL LEVELS

The competency and developmental levels of minors cannot be attached neatly to a chronological age. For example, middle schoolers may present themselves developmentally as a mature 13 year old only to surprise us with behavior typical of a nine-year-old the next day. School counselors' sensitivity to the unique and holistic picture of each student is an important consideration when dealing with the ambiguities of legal and ethical issues.

Clear Imminent Danger or Reasonable and Foreseeable Harm

PRIVACY RIGHTS

The privacy rights of minors belong to the student's parents/guardians.

Family Education Rights and Privacy Act (FERPA, 1984) and the Health Insurance Portability and Accountability Act (HIPAA, 2000), two federal statutes provide guidance. It is the parent and not the student who makes critical decisions about disclosure of personal information. Parents have the final word in who will know about certain of their child's medical conditions such as HIV+ status. Unless an entity is covered by FERPA such as a receiving school, it is parent and not the student who must give permission to release educational records.

LEGAL STATUS OF MINORS

The legal status of minors is difficult to define. A minor is generally defined as someone under the age of 18. All minors share the legal characteristic that they are unable to make decisions on their own behalf. Minors are a group of individuals with complicated legal status that maintains a dependency on adults for privilege and access to resources.

IN LOCO PARENTIS

Another complication of working with minors in a school setting is the interpretation of the common-law doctrine *in loco parentis*, which at times, allows school personnel to act in place of the parent. Common-law thinking on this issue has prevailed for many years. The Wisconsin Supreme Court recognized that educators must be able to address the diversity of expectations placed upon them and have sufficient control over the decorum and climate of the school to ensure that learning can take place (*State ex rel. Burpee v. Burton*, 45 Wis. 150, 30 Am. Rep. 706 (1878)). Inherent in this thinking is the necessity that educators, by virtue of their positions, have the authority to govern school in a reasonable and humane manner (Edwards, 1955). {G}eneral education and control of pupils who attend public schools are in the hands of school boards, superintendents, principals, and teachers and [school counselors]. This control extends to health, proper surroundings, necessary discipline, promotion of morality, and other wholesome influences, while parental authority is temporarily superseded (*Richardson v. Braham*, 125 Neb 142, 249 N.W. 557 (1933)). Educators have an ethical obligation to promote harmony in the school while simultaneously advancing and protecting students' interests.

Eisel v Montgomery County BOE

COMMUNITY AND INSTITUTIONAL STANDARDS

As difficult as it is to accept, ethical are situational. Your ethical behavior is determined in large part by where your school is located. This flies in the face of the school counselor as advocate and purveyor of

justice. However, the prevailing community and institutional standard do dictate to a large degree what school counselors can do and remain ethical.

We cry out, “the support we give students should not depend on the values of the community!” We fight against the notion of treating students differently based on their zip code. As much as it might pain us, we have to know and be respectful of the wishes of the community in which we take a position. In some communities the school counselor could direct a student to a health clinic for contraceptives or could recruit for a support groups for gay/lesbian/bisexual/transgender (g/l/b/t) students. Whereas, in other areas of the country these activities would be a breach of ethics and cross the line against the community and/or institutional standards.

School counselors as leaders and advocates behave as change agents when the community and institutions’ standards of behavior adversely stratify students’ opportunities, then our ethical standards and codes give us a directive to act responsibly to try and change those policies and practices that impede student success (ASCA, 2004). The message here is to understand the prevailing written and unwritten standards of the community, school district, and individual work site and behave consistently within the parameters of those standards while working responsibly to change the ones that hurt students.

Port Washington Pregnancy Policy

ACADEMIC INSTRUCTION

The setting in which school counselors work defines the student-school counselor relationship. School counselors work in a setting designed for academic instruction. Parents send their children to school for curriculum instruction and when children’s emotional needs are being addressed by school counselors, conflict can result between the parents’ right to know what is happening in their child’s life and a student’s right to privacy.

TRUSTING RELATIONSHIP

The school counselor must provide a safe and secure environment in which trust can be established and maintained. Without the assurance of confidentiality, many students would not seek help. Counselors must keep confidential information related to counseling services unless disclosure is in the best interest of students or is required by law.

INFORMED CONSENT

The ASCA Ethical Standards (2010) tell us that the professional school counselor must give informed consent at the beginning of counseling sessions. The purpose of inform the counselee of the purposes, goals, techniques, and rules of procedure under which she/he may receive counseling at or before the time when the counseling relationship is entered. The meaning of confidentiality is given in developmentally appropriate terms and helps the student understand that school counselors will try to keep confidences except when the student is a danger to self or others; the student or parent requests that information be revealed or a court orders a counselor to disclose the information.

Incest Survivors Group

OPACITY OF LAWS AND ETHICAL CODES

The multifaceted nature of working with minors in schools makes it difficult to develop law, ethical codes, written school board policies, or procedures for all the potential variables and situations faced by school counselors. For example, laws that address malpractice, negligence and student privacy rights are complex. Laws are often defined by a court on a case by case basis. . Federal Courts in each state can interpret the same law in different ways from state to state and the interpretation will remain unresolved until a higher court can hear the matter, if ever. Although there is some legal guidance in education law, state department regulations and local and school board policy, school counselors often have to practice in absence of clear-cut guidelines.

NUMBER OF STUDENT-CLIENTS

The very nature of our role as school counselors impacts our legal and ethical obligations. As leaders, advocates, and change agents we are charged with reaching every student but the multiplicity of our role and the obligations we have to so many considerable reduce the amount of consideration and supervision we can give to each student, the extent to which we can document what we have done, and the effort we can undertake to see to each and every child's individual needs. Caseloads do not spell the difference between a counselor who behaves professionally, ethically, and legally and one who does not, however, caseloads influence the thoroughness school counselors devote to each case.

STANDARD OF CARE

Standard of care is defined as what the reasonably competent professional would do. Standard of care is context specific. Negligence cases are founded on the assumption that the standard of care was not met. If you get into legal hot water, your attorney will want to demonstrate that you behaved as any other person in your profession would have. The following criteria are just a few pieces of information your legal council will gather to show that you behaved within the standard of care for your profession:



STEPS: SOLUTIONS TO ETHICAL PROBLEMS IN SCHOOLS (Stone, 2001)

STEPS: Solutions to Ethical Problems in Schools (2001) adapts and extends the seven steps of The Practitioner's Guide to Ethical Decision Making developed by The American Counseling Association (ACA) model and extends the conceptual and contextual applications so they align with the uniqueness of counseling in schools.

STEPS is a nine step model which considers the emotional influences of a problem, the chronological and developmental appropriateness of the solution, the setting and parent's right.

1. Define the problem emotionally and intellectually
2. Apply the ASCA and ACA Code of Ethics and the law
3. Consider the chronological and developmental levels
4. Consider the setting, parental rights, and minors rights
5. Apply the moral principals
6. Determine the potential courses of action and their consequences
7. Evaluate the selected course of action
8. Consult
9. Implement the course of action

1. Define the Problem Emotionally and Intellectually

How do your emotions define this problem (your initial reaction)? What does your heart tell you should happen in this case? File this initial reaction away for later reference.

How does your intellect define the problem; unemotionally, objectively? What are the facts? Separate out the hearsay but remember that rumors often inform. Separate out the facts, innuendos, rumors, hearsay, and hypotheses. However, in school settings we cannot rule out the hearsay or rumors as they are often how school counselors discover the truth about situations that involve their students.

2. Apply the ASCA and ACA Ethical Codes and the Law

Ask yourself whether your code of ethics or the law offers a possible solution to the problem. Ethical dilemmas are often complex and we will not usually find a hard and fast simple solution in the codes or laws.

3. Consider the chronological and developmental levels

How does the student's developmental level impact the dilemma and how you will approach it? It matters how old a child is and how they demonstrate their ability to make informed decisions. Also, school counselors have to continually remind themselves that the younger and more immature the child, the greater our responsibility is to their parents/guardians.

4. Consider the setting, parental/guardian rights and minors' rights

You must consider the rights of parents/guardians to be the guiding voice in their children's lives, especially in value-laden decisions. Clear or imminent danger can take many forms and is not necessarily an uplifted knife when you are talking about a minor in a setting called schools. Parents' rights to be informed and involved when their children are in harm's way must be honored.

5. Apply the Moral Principals (Kitchener, 1984)

Consider the basic moral principles of autonomy, beneficence, nonmaleficence, justice, and loyalty (Kitchener 1984) and apply them to the situation. It may help to prioritize these principles and think through ways in which they can support a resolution to the dilemma.

6. Determine Your Potential Courses of Action and Their Consequences

Consider possible and probable courses of action. In this process of thinking about many different possibilities for action, it is helpful to write down the options and also to discuss options with another person. Examine the good and bad consequences of various decisions. Ponder the implications of each course of action for the student, for others who are

related to the student, and for you. List the good and bad consequences of each decision.

7. Evaluate the Selected Action

Evaluate each option considering the information you have gathered. and assess the potential consequences for all the parties involved. Ponder the implications of each course of action for the student, for others who will be affected, and for yourself as a counselor. Eliminate the options that clearly do not give the desired results or cause even more problematic consequences. Review the remaining options to determine which option or combination of options best fits the situation and addresses the priorities you have identified.

8. Consult

Discuss your case with a fellow professional, preferably a supervisor, to help you illuminate the issues. In the throes of an ethical dilemma it is sometimes difficult to see all the issues clearly. School counselors often have to do their ethical problem solving on the run. It is not always possible or feasible for school counselors to close their office doors and sit with paper and pencil to walk through the ethical decision making model. There consultation is the one step that should never be skipped (Stone, 2001).

9. Implement the Course of Action

Go forward with your decision after you have considered the previous steps. Regardless of your decision, risk follows but you made the best decision based on the advice and information you had at the time. School counselors cannot practice risk free but we can reduce our risk and raise our support for students by using ethical reasoning.

STEPS is reprinted from Stone, C.(2005; 2010). Ethics and Law for School Counselors. ASCA: Alexandria, VA



CASE STUDIES

Legal and Ethical Issues in Working with Minors in Schools

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CASE 1 Group Work

You are working with a young woman who reveals she is a victim of incest that ended five years ago. You are already working with another young woman who is dealing with the same issue. After several months you decide it would be in the best interest of these two girls to bring them together. You also include 2 other young women who are incest victims, have been through years of counseling and are progressing well. You bring these four students together for weekly group counseling. You spend a great deal of time on the issue of confidentiality at the first meeting. You are comfortable that the students all understand the imperative to keep all revelations confidential. Is there an ethical dilemma here?

Points to Consider

ASCA Ethical Standard A.6.c. “establishes clear expectations in the group setting and clearly states that confidentiality in group counseling cannot be guaranteed. Given the developmental and chronological ages of minors in schools, the counselor recognizes the tenuous nature of confidentiality for minors renders some topics inappropriate for group work in a school setting.”

We must continually ask ourselves, “will the potential emotional cost to students and their families be worth any gains that we may accomplish?”

Case 2 Suicide

A fourteen-year-old middle school student reports to you that Sarah, a counselee of your colleague Mr. Barnes, is involved in Satanism and has entered a murder-suicide pact with another student. You and Mr. Barnes call Sarah in and she vehemently denies the allegations and even scoffs at the idea that she would ever be involved in a cult. She convinces you. Do you have any further obligations in this case?

Points to Consider

-A duty was owed	Standard of Care
-The duty owed was breached	-codes
-There was sufficient casual connection between breach and injury	-credentialing bodies
-Injuries were suffered	-school board or agency policies
	-civil laws, criminal laws
	-court cases
Eisel vs. Montgomery County Board of Education	-expert witnesses

CASE 3 Abortion Counseling

A seventeen-year-old woman tells you she is pregnant and asks for your advice as to whether she should have an abortion. What should you do?

14 A The above minor is thirteen-years-old?

14 B (The above scenario, yet add this information...) You are vehemently opposed to abortion. What do you do?

Points to Consider

Arnold v. Escambia County Board of Education

11th Circuit Court of Appeals remanded the case to trial

Principle involved: Constitutional Rights would be violated if it were found that there was coercion.

CASE 4 GLBTQ Students

A principal has called two girls into his office that was making out in the hallways. Despite their protest he calls their parents to tell them the code of conduct they violated and the gender of the partner. One student's parent sues for breach of her child's privacy rights. Did her daughter give up her privacy rights when she made out with her girlfriend in the hallway?

Court Cases to Consider

- Wisconsin, 1996: Jamie Nabozny was awarded \$962,000, for injuries he suffered while at Ashland Middle School and Ashland High School. This was the first time a federal jury found school officials responsible for anti-gay harassment committed by students. In addition to verbally abusing him, Nabozny said other students kicked him, urinated on him, and in one incident, pretended to rape him. One attack left him in need of surgery.
- Illinois, 1996: The Riverside-Brookfield School District settled a lawsuit filed by the family of a gay student who alleged that school officials did not act on his complaints of abuse from other students.



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Annual Agreement Template

School Counselor _____ Year _____

School Counseling Program Mission Statement

School Counseling Program Goals

The school counseling program will focus on the following achievement, attendance, behavior and/or school safety goals this year. Details of activities promoting these goals are found in the curriculum, small-group and closing-the-gap action plans.

Program Goal Statements	
1	
2	
3	

Use of Time

I plan to spend the following percentage of my time delivering the components of the school counseling program. All components are required for a comprehensive school counseling program.

	Planned Use			Recommended
Direct Services to Students	_____%	of time delivering school counseling core curriculum	Provides developmental curriculum content in a systematic way to all students	80% or more
	_____%	of time with individual student planning	Assists students in developing educational, career and personal plans	
	_____%	of time with responsive services	Addresses the immediate concerns of students	
Indirect Services for Students	_____%	of time providing referrals, consultation and collaboration	Interacts with others to provide support for student achievement	
Program Planning and School Support	_____%	of time with foundation, management and accountability and school support	Includes planning and evaluating the school counseling program and	20% or less

			school support activities	
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Advisory Council

The school counseling advisory council will meet on the following dates.

Planning and Results Documents

The following documents have been developed for the school counseling program.

- Annual Calendar
- Closing-the-Gap Action Plans
- Curriculum Action Plan
- Results Reports (from last year's action plans)
- Small-Group Action Plan

Professional Development

I plan to participate in the following professional development based on school counseling program goals and my school counselor competencies self-assessment.

Professional Collaboration and Responsibilities Choose all that apply.

Group	Weekly/Monthly	Coordinator
A. School Counseling Team Meetings		
B. Administration/School Counseling Meetings		
C. Student Support Team Meetings		
D. Department Chair Meetings		
E. School Improvement Team Meetings		
F. District School Counseling Meetings		
G. (Other		

Budget Materials and Supplies

Annual Budget \$_____ Materials and supplies needed:

School Counselor Availability/Office Organization

The school counseling office will be open for students/parents/teachers from

_____ to _____

My hours will be from _____ to _____ (if flexible scheduling is used)

The career center will be open from _____ to _____

Role and Responsibilities of Other Staff and Volunteers

School Counseling Department Assistant _____

Attendance Assistant Clerk _____

Data Manager/Registrar _____

Career and College Center Assistant _____

Other Staff _____

Volunteers _____

School Counselor Signature _____

Principal Signature _____

Date _____

SMART Goals Worksheet

Specific Issue What is the specific issue based on our school's data?	
Measurable How will we measure the effectiveness of our interventions?	
Attainable What outcome would stretch us but is still attainable?	
Results-Oriented Is the goal reported in results-oriented data (process, perception and outcome)?	
Time Bound When will our goal be accomplished?	

School: _____ Year: _____

School Counselor(s): _____

Based on the information above, write a single goal statement sentence

Example: By the end of the year, the number of discipline referrals will decrease by 20 percent.
