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Counseling Minors: Confidentiality in a School Setting vs. in a Private Practice Setting

I. Introduction:

Confidentiality is a very important ethical guideline in the field of counseling and therapy. Protecting the rights of minors in a therapy setting is perhaps even more important. Although there are some distinct differences between counseling minors in a school setting and a private practice setting, commonly individualized or family therapy, it is important to note that there is a common code of ethics that remains consistent across both environments that counselors must adhere to.

II. Code of Ethics: Confidentiality

According to the American Counseling Association's code of ethics (2005), under the ethic of Respecting Client Rights, there are several principles that are important pertaining to this subject-matter, such as respect for privacy, respect for confidentiality, and explanation of limitations. With explanation of limitations comes another group of principles that fall under the ethic of Exceptions. Also there are a couple guidelines specifically created for group and family therapy.

According to Fisher (2008), each state imposes different legal limits on their ability to protect clients' confidences (p. 2). This only further complicates the concept of confidentiality because there is no concrete consistency among therapists across the country and therefore, every counselor has their own values and beliefs about what information discussed in a therapy setting should be breeched.

Issues with confidentiality are often where counselors and therapists struggle because there are so many laws protecting the client and only a few protecting them. In particular, the confidentiality of minors is even more complex than your average adult client. Along with issues that fall under duty to warn and duty to protect, which include dangers to others and if there is a question of danger to themselves, there are issues of pregnancy, risky behavior, and illicit drug use. Therapists may feel that it is necessary to inform parents or other authorities, but under confidentiality, the rights of the client are protected, even if they are a minor.

III. Counseling Minors

When it comes to counseling minors, they have the same rights as adults do. However, there are parts of child development that are important to understand to be successful when providing them with therapy. For example, "Children need to be understood from the context of their developmental

stages and related developmental tasks, and interventions need to be designed to match the child's level of development and understanding" (Lawrence, 133).

There are also principles that are put in place in order to protect the counselor such as informed consent, which states that "when counseling clients who are minors or individuals who are unable to give voluntary, informed consent, parents or guardians may be included in the counseling process as appropriate. Counselors are expected to act in the best interest of the client and take measures to safeguard confidentiality. Counseling minors is very tricky at times, and the therapist is often left struggling with making the right decision when it comes to the best interest of the client and confidentiality issues.

IV. School Setting

Counseling in a school setting is a very interesting client relationship. Since there is usually only one or two school counselors who are actual therapists and the rest are labeled as guidance counselors, there can be much confusion as to what the role of school counselors are. Also, because there is a limited number of qualified people in these positions, children are usually placed with someone rather than having a choice of a therapist in a private practice setting.

To be effective in protecting the rights of their students/clients, school counselors must have a good idea of issues related to confidentiality, as well

as the legal status of minors and the legality and ethics of privacy, and informed consent

One factor that school counselors commonly encounter is when to get parents, teachers, and other individuals involved when students confide in them about a particular issue. School counselors must balance the ethical and legal responsibilities to the students as clients, their parents, and the school systems. School counselors are part of an educational community and so they consult with teachers, parents, and administrators. It is important for school counselors to clarify that their consultation is on behalf of the students.

Another important legal concept to consider for school counselors is that “the age of majority has implications for minor clients’ rights to make choices about entering into counseling as well as their rights to privacy and confidentiality” (Glossoff, 2002). Since counseling is considered to be a contractual relationship, most places do not allow for minors to seek counseling on their own. In this case, school is the only outlet for children to seek advice from someone who they know will be able to help them without their parents knowing they went to see the guidance counselor that day. This also ties into what was said before—school counselors are then left with where to draw the line as to when involving parents and other authority figures is the best for the child.

Breaching confidentiality is obviously a major issue for most counselors. Although states have different laws regarding confidentiality, according to a study conducted by Lazovsky (2008), there seems to be much consistency among school counselors universally. The study, conducted in Israel, found that school counselors were most likely to breach confidentiality when the child was involved in dangerous behaviors or situations. As expected they were least likely to disclose information that pertained to personal and family information. It is comforting to know that although there is some disconnect, most school counselors are on the same page.

(There will be an interview conducted with a high school guidance counselor to provide consistency with the issues discussed here.)

V. Private Practice Setting

Counseling minors in a private practice setting is often via the request of a doctor or concerned parents or perhaps it is a group or family therapy setting. If the therapy is individualized, the therapist will have similar quandaries as school therapists, but perhaps more amplified. If the minor is referred by a doctor or if a parent is paying a great deal of money to see someone who is considered a professional, the issues that are presented by the child are usually much more severe than in a school setting.

Similar to school counselors though, these therapists often wrestle with what to disclose to the parents. Even if a child is forced into therapy by

their parents, once they are in that contractual setting with just them and the therapist, most of what they say will not be repeated back to the parents, as it is the child's right as a client.

It gets a little more interesting with family therapy. In these settings, there is an intended patient (IP) who is the reason for the family seeking therapy. In most cases, the IP is a child, even though there are usually underlying issues in the family that have little to do with the child. As far as confidentiality goes, most family therapists do not have so many issues because what the child discloses during therapy is heard by everyone in the family.

Depending on the style of the therapist, they might hold individual sessions with each member of the family in hopes that they will talk more if they are alone. While this may provide the therapist with more information into the family, it may not be the best idea because there is more room for legal issues to arise for the therapist. If the therapist chooses this route, there is an ethical guideline that they must adhere to stating that "counselors seek agreement and document in writing each agreement among all involved parties having capacity to give consent concerning each individual's right to confidentiality" (ACA, B.4.b) In order to protect themselves, it is very important for the therapist to be very clear with the family what the guidelines of the individual sessions are. For example, what is revealed during the individual sessions is open for

discussion within the family sessions as well, and each member of the family will be allotted the same amount of time for the individual sessions.

But what happens when a child reveals crucial information about themselves or the family in confidence after the family sessions and it is clear that there are no individual sessions? This is what family counselors grapple with the most in terms of confidentiality. While there is no correct answer to this issue, “when working with minor clients who are hesitant to disclose to parents, it is recommended that counselors motivate them to disclose (when appropriate and potentially helpful) by helping them to understand the relevance and possible benefits of disclosure” (Lawrence, 134).

VI. Conclusion

It is important for counselors in any setting to realize that when it comes to minors and confidentiality, there is never a right or best answer. For instance, the guidelines state that “where a child or adolescent is the primary client, the interest of the minor shall paramount” (ACA, 2005) and that could potentially be at odds with the law, which leaves the therapist to decide between what is legally correct and what is ethically correct. The decisions made during therapy sessions are completely situational and most of the time, the therapist just has to go with what feels right.

A way to be successful in avoiding conflicts with confidentiality in counseling minors is to make it 100% clear to the minor when other people will become involved, or in a private setting, to involve parents at the beginning to come to a clear, mutual agreement regarding when they will be provided with information. The creation of this bond of trust at the beginning of treatment is crucial to the effectiveness of therapy and of self-protection for the therapist.

References

Diaz, A., Neal, W., Nucci, A., Ludmer, P., Bitterman, J., & Edwards, S. (2004). Legal and Ethical Issues Facing Adolescent Health Care Professionals. *Mount Sinai Journal of Medicine*, 71(3), 181-185. Retrieved from Academic Search Premier database.

This article discusses how the issue of confidentiality affects and therefore forms the legal standards and ethical dilemmas surrounding the provision of care to adolescents. This particular article suggests that "maturity" of the adolescent is an important factor in determining whether they need parental consent for issues that arise during therapy sessions. For the purpose of this paper, it is important to understand the legal standards and ethical dilemmas, as well as the rights that minors have in a therapist-client relationship.

Fisher, M.A. (January 2008) Protecting Confidentiality Rights: The Need for an Ethical Practice Model, *American Psychologist*, 63(1), 1-13. doi: 10.1037/0003066X.63.1.1. Retrieved from SciVerse database.

This is another article discussing the legal standards of confidentiality. Within the article, an ethics-based confidentiality model is presented that clarifies the ethical rule and puts its legal exceptions into perspective. The part of this that is used in the paper is the fact that "each state imposes different legal limits on their ability to protect clients' confidences".

Glossoff, H.L., Pate Jr., R.H. (October 2002) Privacy and Confidentiality in School Counseling, *Professional School Counseling*, 6 (1), 20. Retrieved from Academic Search Premier database.

Lazovsky, R. (June 2008) Maintaining Confidentiality with Minors: Dilemmas of School Counselors. *Professional School Counseling*, 11(5), 335-346. Retrieved from Academic Search Premier database

In this article, 195 school counselors in Israel are examined in regards to their attitude to the decision to breach confidentiality in some ethical dilemmas that are presented and the reasons for their justification of their decisions. The study found that school counselors were more willing to breach confidentiality within the confounds of dangerous behaviors or situations, less willing in the confounds of dangerous behaviors, and even less willing in the confounds of personal and family information. These findings are crucial to this paper because it helps solidify that the reasons for counselors breaching confidentiality are universal.

McCurdy, K.G., Murray, K.C. (October, 2003). Confidentiality Issues When Minor Children Disclose Family Secrets in Family Counseling. *The Family Journal*, (11). doi: 10.1177/1066480703255468. Retrieved from Expanded Academic ASAP database.

In this article, a case example of an individual session disclosure with a minor is presented along with ethical considerations and practice recommendations for counselors coming into the field. The findings of the case study provides evidence that it is extremely difficult for counselors to decide whether not it is appropriate to inform parents of information that children disclose during individual therapy sessions, and that sometimes it solely depends on the situation. The article suggests for counselors to turn to ethical codes and to just go with their first instinct; you will more than likely make the right decision based on the situation provided. This article was the starting point of all the research conducted for this paper. While it is an older article, the information is timeless and extremely important for people entering the counseling and human services fields.