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Ethical Dilemmas for the School Counselor: Balancing Student Confidentiality and Parents' Right to Know

Nithya N. Iyer & Julia Baxter-MacGregor

Abstract

Professional School Counselors have a variety of roles and responsibilities to students, teachers, parents, and administrators. School counselors must collaborate with both the students and other stakeholders – in this case, usually parents and teachers. Consultation and collaboration with stakeholders can be carried out through team meetings or child study teams, with all relevant parties present. Such gatherings, while beneficial to everyone involved, can potentially bring about ethical dilemmas for school counselors. This article will examine the function of child study teams, the counselor's role as consultant within the team, and what ethical issues might arise in this role. Recommendations for avoiding and resolving such potential dilemmas are provided.

According to the American School Counseling Association (2004), it is the responsibility of the school counselor to help a child develop effective coping skills, identify personal strengths and assets, and recognize and express feelings, as well as to provide a foundation for the child's personal and social growth as he or she progresses through school into adulthood. As part of this process, school counselors must collaborate with both the students and other stakeholders – in this case, usually parents and teachers. Consultation and collaboration with stakeholders can be carried out through team meetings or child study teams, with all relevant parties present. Such gatherings, while beneficial to everyone involved, can potentially bring about ethical dilemmas for school counselors. Various quandaries might arise when a counselor must balance student confidentiality with the provision of essential information to the child study team, as well as taking into account parents' right to know. As a result of their participation in child study teams, school counselors must often make difficult ethical decisions based on confidentiality, their

ethical obligations to students and parents, maintenance of trust, and compliance with pertinent laws and regulations. This article will examine the function of child study teams, the counselor's role as consultant within the team, and what ethical issues might arise in this role. Recommendations for avoiding and resolving such potential dilemmas will be given.

Child Study Teams

Child study teams (CSTs) can be very beneficial to students and those involved in their lives. CSTs facilitate the process of implementation of accommodations, services, and intervention that will enable a student to be successful in school. Such teams, consisting of parents, teachers, and other school professionals, will likely receive increasing emphasis in future educational policy as both a mandated and practical way to involve parents in important decisions regarding their children's education (Esquivel, Ryan, & Bonner, 2008). The ultimate goal of a CST is to enable the school to best meet the needs of students who are facing school-based difficulties (NYS Teacher Centers, 2010). The CST approach to these issues includes review of the problems faced by the student, the creation and discussion of possible solutions, recommendations for intervention, and review of the results of the accommodations that were put in place.

These teams enable all parties to work together in an effort to provide better and more effective care for a student, and to avoid the confusion that can occur when a student meets with each party separately (Johnson & Johnson, 2003). Marlow, Bloss, and Bloss, (2000) suggested that teachers and counselors must be aware of their attitudes toward collaborative teaching, planning, and facilitation in order to work together to better foster a nurturing educational environment. However, as helpful as CSTs can be, they often create ethical dilemmas wherein

the school counselor involved is in a situation where they must decide what information to disclose while maintaining confidentiality and revealing necessary information to team members. As an example of this, a school counselor may have knowledge of specific home-related problems, such as a parent's over-use of alcohol, that are impacting a student's performance in the classroom. While the basic information of personal or home-related problems may provide needed insight to the team, the provision of any details, if requested, would pose a possible ethical dilemma for counselors who are working to maintain confidentiality with their student. In the common and vital school counseling role of consultant, school counselors must always weigh the ethical issues connected to the provision of information regarding their students. It is within consultation experiences such as those inherent in a CST that school counselors must ask themselves the important question, what information is essential to this process?

Ethical Dilemmas Faced by School Counselors in Child Study Teams

National and Ethical Standards

Baker, Robichaud, Westforh, Wells and Schreck (2009) noted that consultation has historically been a basic and important school counseling role and function. Baker and Gerler (2008) indicated that the natural recipients of consulting services in schools include students, teachers, administrators and parents. Consultation occurs when the school counselor, in the role of consultant, helps the recipients, as consultees, to work together to come up with a goal or solution to better accommodate the needs of the student. CSTs would be an example of a collaborative consultation, in that it involves the school counselor working with others to brainstorm possible issues and solutions regarding a student, and then working towards a plan that best fits the needs of everyone involved (Baker et al., 2009).

In order to lead a consultation such as a CST meeting, school counselors must first be familiar with the rules and regulations, and also understand the ethical issues involved. The National Standards for Students (American School Counselor Association, 2004a), the National Model (American School Counselor Association, 2008), and the Ethical Standards for School Counselors (American School Counselor Association, 2004b) were developed as part of an effort to enforce such rules and regulations, and to provide standards by which each counselor should abide. Specifically, school counselors must abide by the standards established by to the American School Counseling Association (ASCA) (Baker and Gerler, 2008). According to Dahir, Hardy, Ford, and Morrissey (2005), the National Standards for School Counseling provide school counselors, administrators, teachers, and counselor educators with a readily understood “common language” to foster student success across other disciplines. As stated in the ASCA Ethical Standards for Counselors (2004), school counselors are to keep information gained through counseling or consultation confidential. The exception to this is if the disclosure of the information would prevent danger to the student or others, or when legal requirements require that such information be revealed. Additionally, ASCA states that school counselors must balance the responsibility to maintain confidentiality with the knowledge that parents/guardians have legal rights to information pertaining to their children. When sharing information with other professionals within the consultation role of the school counselor, ASCA noted that there needs to be an appreciation for the difference between public and private information. Within this role, school counselors are to “provide professional personnel with accurate, objective, concise and meaningful data necessary to adequately evaluate, counsel and assist the student” (Section C.2., b). As stated previously, the potential ethical dilemma would be if within the

consultation, specific details regarding a student were requested that were not relevant to the goal of the meeting.

In the Ethical Standards, confidentiality is emphasized as a crucial part of the counseling process (Dahir et al., 2005). Confidentiality assures the student that the school counselor will keep all that is said during their counseling sessions private, except under certain circumstances which are conveyed to the student at the beginning of the counseling process. Such circumstances include the determination that a student may be in danger of harming him/herself or others and/or thought to be a victim of abuse or neglect, or the school counselor being subpoenaed to court (Glossoff & Pate, 2002). It is important that school counselors be well informed regarding state laws pertaining to privileged communication. In New York State, a school counselor's duty to maintain client confidentiality does not carry over to any court order for the disclosure of any information pertinent to the legal proceedings. However, this is where state law and ethical standards differ; school counselors in NYS are not included in privileged communication.

Students must trust the school counselor in order to be able to enter into a meaningful and honest dialogue with them. Without confidentiality, the child may censor what he or she tells the counselor, or refuse to see the counselor entirely. In most cases, however, the parent or guardian's legal right to know what happens during counseling sessions can allow confidentiality between the school counselor and the minor student to be legally broken if a parent demands to know what takes place, potentially leading to a student not returning to counseling (Glossoff & Pate, 2002; Mitchell, Disque, & Robertson, 2002; Phillips, 2007).

Accordingly, school counselors not only have responsibilities to students, such as confidentiality, but are also responsible to parents and other member of the CST. The Ethical Standards require the school counselor to inform parents of the school counselor's roles and the importance of confidentiality. When taking into account what parents want for their children and the information they desire to know, school counselors must make decisions regarding what they will disclose to parents, keeping in mind what information is most critical, and what they are legally obligated to let the parents know (Baker & Gerler, 2008). It is widely accepted that in cases when clients engage in behavior that presents a clear and imminent danger to themselves or others that a parent's right to know supersedes the clients' right to confidentiality (Glossoff & Pate, 2002). If a counselor becomes aware of drug experimentation or suicidal ideation in, for example, a fourth grade student, it would be appropriate to share this information to a child's parent or guardian. School counselors also must educate teachers and other professional associates involved with the student about school counselor roles and the significance of confidentiality, and share any information that is necessary and helpful to the care and education of the student (Baker & Gerler, 2008). Within the role as consultant with teachers and as part of a CST, school counselors can navigate these tricky ethical situations by sharing strategies to help students, rather than specific information as to the student's life. For example, if a student is having behavioral issues that appear to be related to a lack of attention from his or her parents because of their continual fighting, it would be appropriate to assist the teacher in methods for giving the student positive attention and support, rather than the details of the student's home life.

School counselors must not only be mindful of their ethical duties, but also cooperate with any laws that apply to them and/or other members of the team such as, teachers, school

psychologists, psychiatrists, and/or school nurses. The Family Education Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act (HIPAA) are two laws that often apply to school counselors and other team members (Glosoff & Pate, 2002; Darden, 2009; Brendel & Bryan, 2004). According to Glosoff and Pate (2002), FERPA “establishes that parents control the privacy rights of students under the age of 18” (p. 24). This includes any of the student’s records such as, grades, awards, date of birth, among other details (Darden, 2009). Decisions about the release of this information are based on the exceptions listed under FERPA as well as the parents’ consent. For example, school counselors cannot consult with mental health counselors without signed release from the parent. Further, most school counselors protect records and other documentations from view of those that do not have a need to know, such as a classroom aide.

HIPAA is another law that school counselors must keep in mind during a child study team meeting. HIPAA was enacted to protect patients’ health information; in this case it is the students’ medical records that are being protected (Brendel & Bryan, 2004). This would apply especially to school nurses, school psychologists, and psychiatrists, all possible members of a CST. The school counselor must decide what to disclose and what information to inquire about based on each members’ rights and responsibilities. Deciding what to reveal and what to keep confidential can present the school counselor with a serious ethical dilemma. While a student’s psychological evaluations, test scores and medication may be known to the school counselor to assist them in best helping their client, this is not information to be shared with others. For example, a statement such as “Robert is acting crazy today; he must be off his meds again”, made in the teacher’s lounge during lunch would be completely inappropriate in regard to the protection of the student’s health information.

Ethical Dilemma

The issue of confidentiality in CSTs, especially involving personal disclosures, has been found to be the most common and challenging issue for school counselors (Bodenhorn, 2006). As previously stated, a CST may include the school counselor, teachers, parents, and other school professionals, working together to determine how a student is performing and what can be done to help him/her. During the course of a CST meeting, parents and teachers may inquire about what the student shares with the counselor during their sessions (Huss, Bryant, & Mulet, 2008). Naturally, parents are likely to ask the counselor what the student has been discussing, such as what their child said about the cause of a fight in which they were involved at school, why they seem so angry lately, or any other issues they may have been talking about. While typically asked out of curiosity and good intentions, these types of questions ask the counselor to break confidentiality with the student. As an example, during a team meeting about a child who is seeing the school counselor regarding his/her anxiety issues, the parent asks the school counselor what the child has been talking about, and the teacher asks the school counselor why the he/she has been so stressed. The school counselor now faces an ethical dilemma for which he/she must carefully weigh the options, determining specifically what information needs to be disclosed and how questions can be answered, without revealing detail which is too specific. In addition to their legal right to know, parents do need to understand certain aspects of a child's issues in order to help them; however, revealing information that the student disclosed to the school counselor in confidence can ruin the counseling relationship (Huss et al., 2008). According to Phillips (2007), this dilemma is "nearly a constant struggle for school counselors and can create a dynamic tension within the educational environment, where the students' right to confidentiality needs to be weighed against others' need to know" (p.41).

In all such situations, the school counselor is responsible for maintaining confidentiality to the student, but also remains responsible to the parents and teacher. Within the context of consultations and participation in a CST counselors are expected to present information that is relevant to the goals of the meeting without disclosing any details from counseling sessions. According to Glosoff and Pate (2002), there are two excellent questions counselors in these situations should ask of themselves prior to sharing any information. These questions are: “Do team members need to know this?” and “How will knowing this help the team make decisions that will facilitate the student’s educational progress” (p.24). These questions can be very beneficial in helping school counselors to move through these potential ethical quandaries.

Recommendations

In an effort to deal with or prevent the occurrence of any ethical dilemma that arises as a result of CSTs, a number of researchers recommend the following:

- Educate teachers, parents, and administrators about the importance of confidentiality, thus reducing the likelihood of difficult situations posed by ethical dilemmas developing in the first place (Huss, Bryant, & Mulet, 2008; Bodenhorn, 2006; Glosoff & Pate, 2002). A good addition to one’s counseling brochure or web page would be a definition of confidentiality and its limitations. For example, such a statement might be: As a school counselor, the information shared within the counseling session remains confidential unless the student or someone else is in danger. An explanation of confidentiality would be a good addition to any orientation or meeting with parents and teachers. Additionally, it is expected that all school counselors inform their student/clients of the limitation

to confidentiality so that they are aware that some information must be shared in order to help and protect them.

- Develop and maintain a strong informed consent policy. Informed consent is an ongoing process and should begin even before counseling process begins (Glossoff & Pate, 2002; Bodenhorn, 2006). A good practice for school counselors is to develop a written informed consent policy that could be given to parents and teachers. It is also beneficial to include this information on any form used to gain written parental consent for counseling. Prior to meeting with any student, a good statement would be “Whatever you tell me will be just between us unless I am worried about your health or safety, or someone else’s health or safety. Do you have any questions about that?” (Glossoff & Pate, 2002, p.25). While this is sufficient with younger clients, with older students, it might be also useful to discuss specific examples of such conditions.
- Send out educational newsletters and emails regarding confidentiality, in order to be proactive and avoid the possible ethical dilemma before it occurs (Glossoff & Pate, 2002). Possible items to include in such correspondence would be: a definition of confidentiality, one’s informed consent policy, any pertinent state regulations or laws, a summary of ASCA’s ethics statement for counselors, and information on how to contact you if needed.
- According to Bodenhorn (2006), “school counselors should remain updated on laws and school policies regarding confidentiality of student records” (p.201). This can be accomplished by doing things such as attending professional

development workshops, and studying laws and policies regarding confidentiality (Glossoff & Pate, 2002). When well educated on legal and ethical matters, school counselors can be prepared for possible dilemmas and are knowledgeable about the ways in which to deal with them appropriately. One excellent way to maintain the highest level of professional information is to attend counseling conferences. Two excellent choices are the New York State School Counselor Association and the American School Counselor Association, both of which have annual conferences which include workshops on many issues of critical importance for practicing professional school counselors.

- Develop and maintain a strong network of people that school counselors can confide in and ask advice when they encounter an ethical dilemma involving school counseling (Glossoff & Pate, 2002). Such a network might include other area counseling professionals, school psychologists, and local psychologists and psychiatrists, all of whom work within similar ethical frameworks. For more information regarding such a common framework, a classic source would include Kitchener's (1984) five moral principles regarding ethical decision making. These five principles are autonomy, justice (fairness), beneficence (doing good), nonmaleficence (doing no harm) and fidelity (keeping promises). Forester-Miller and Davis (1996) suggest the following as an ethical decision making model: 1) Identify the problem; 2) Apply one's professional code of ethics; 3) Determine the nature and dimensions of the dilemma; 4) Generate potential courses of action; 5) Consider the potential consequences of all options and choose a course of action; 6) Evaluate the selected course of action and 7.) Implement the course of action.

- Mitchell, Disque, and Robertson (2002) suggest that when parents, in particular, ask questions about their child that may be confidential, the school counselor should first inform them of the importance of confidentiality in the counseling process, and also tell the parents to ask the child themselves, so that the school counselor avoids becoming an informer. The school counselor should also tell the student what the parents want to know, and help the student prepare to tell them if he/she decides to do so.
- Another proactive suggestion to dealing with ethical dilemmas regarding parents' right to know is to arrange a meeting with both the student and the parent in order to offer a neutral discussion invitation (Glossoff & Pate, 2002). This can be done in a CST meeting as well.

Conclusion

School counselors have a tremendous amount of responsibility to students, teachers, and parents. The responsibilities toward each group differ, sometimes contradicting each other. To students, school counselors are responsible for maintaining confidentiality and acting in a student's best interest. School counselors are also responsible for arming parents and teachers with the correct and necessary information to assist in best serving the student. These two responsibilities contradict each other, therefore producing an ethical dilemma for the school counselor involved. In order to maintain confidentiality, the school counselor cannot reveal private and confidential information that the student disclosed. At the same time, if the school counselor does not inform the parents or teachers, they will not be fulfilling their responsibility to them. This dilemma is nearly inevitable in a child study team situation since the reason and

goal for the team is to work together to best serve the student. In many cases, however, when the right course of action is left up to the school counselor's discretion, child study teams can be of great benefit to all involved.

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