

Confidentiality/Need to Know



I RUN A SMALL GROUP IN MY SCHOOL FOR STUDENTS WHOSE PARENTS ARE DIVORCING. I WAS JUST ASKED TO TESTIFY IN A DIVORCE/CUSTODY CASE FOR THE PARENTS OF ONE OF MY GROUP MEMBERS. HOW MUCH CAN I (OR SHOULD I) DIVULGE ABOUT THINGS THE STUDENT SAID IN THE GROUP MEETINGS?

First, be cautious about what you allow students to discuss in a divorce group. Avoid having children talk about the messiness of the divorce in a group setting, instead encouraging safer topics for a divorce group such as dealing with change or resiliency. We have to safeguard our students since we cannot guarantee confidentiality in groups. Minors often change friends and loyalties, and with this fluid behavior there is the danger of a student gaining attention, seeking revenge or just thoughtlessly revealing another student's personal pain. It is imperative to remind ourselves that confidentiality will be breached. If you have followed this approach with the divorce group, when called to testify you will have mainly facts to share, such as dates, lesson topics, number of students attending (not names) and a general summary of the student's engagement and not inflammatory details that cast one parent or another in a bad light.

School counselors are often asked to endorse one parent over another in custody battles. Ask yourself if you really have a clear picture as to which parent is a better fit for a student. Try to get a motion to have the subpoena quashed. We will continue to enter the legal arena as our judgment dictates, but a sobering dose of caution may help us re-evaluate some of our involvement.



IN THE PAST, ADMINISTRATORS HAVE ASKED ME TO BREAK STUDENT CONFIDENTIALITY REGARDING MATTERS THAT, IN MY OPINION, AREN'T NEED-TO-KNOW. WHAT SHOULD I DO IN CASES LIKE THIS? IS IT INSUBORDINATION TO REFUSE TO GIVE THAT INFORMATION?

This situation challenges you to use your best political and collaborative skills to demonstrate

respect for the position of authority while still adhering to your obligation to protect students' confidential and sensitive information. To simply refuse an administrator's request outright is to set up a power struggle that will cause you to lose time, energy and, in the case of a few lawsuits, money.

There are no hard and fast rules; rather your response to a request for confidential information has to be made in context of the school counselor/administrator history, relationship and trust. Confidentiality is much harder to respect with the competing interests in a school setting. In most all states, administration is entitled to information on students deemed need to know to optimize a student's learning. The onus is on you to figure out how to promote students' autonomy while also letting administrators know you're listening and respecting their requests. Here are some suggestions for dealing with the confidentiality issue:

- Look for opportunities to interject information about the critical importance of your confidentiality before it becomes an issue.
- Early on establish a trusting relationship with your teachers and administrators by letting them know you will immediately involve them in information affecting students' safety and well-being.
- Learn to deflect or address requests for confidential information in such a way that the teacher or administrator feels supported. For example: "What are you observing with this student?" "Is there a particular issue I can help you solve?" "Rather than have you labor through my notes, would it help you if I make a list of the most common problems students bring me?"
- Give your principal a copy of the ASCA Ethical Standards for School Counselors, and offer to highlight the most salient points. This may help set the stage so the administration will know not to seek sensitive confidential information from you.
- If you believe the requester of confidential information would support and help a student if the requester had the information, then ask the student if you can share what the requester needs to know. Sometimes we may need to give out information without consulting a student, but this will be the rare exception.
- If you do give information, then provide only the necessary information and nothing

more. For example, if a student has witnessed domestic violence and comes to school the next morning traumatized and ready to fight it out with everyone in his or her path, it would help if the teacher understood the student has been through a great deal and may need extraordinary support and understanding from the teacher or administrator.



WHO NEEDS TO KNOW WHAT? HOW DO I BALANCE THE ISSUES OF CONFIDENTIALITY WITH NEED TO KNOW FOR STUDENTS, TEACHERS, PARENTS AND ADMINISTRATION, ESPECIALLY WITH WHAT COULD BE CONSIDERED AT-RISK ISSUES?

The need-to-know rule requires school counselors reveal sensitive information only when the recipients of the information has a need to know and is in a position to benefit the student if they have the shared information. Without the assurance of confidentiality, many students would not seek our help. Breaching student confidentiality with teachers, parents and administrators requires continuously balancing the rights of students and parents against the criteria of need to know.

School counselors practice confidentiality through the following concepts: 1) *in loco parentis*; 2) substantial interest/need to know and 3) qualified privilege:

In loco parentis is a legal doctrine meaning educators assume custody of students in school because students are deprived of protection from their parents or guardians. The school counselor owes a special duty to exercise reasonable care to protect students from harm, and this includes protecting their right to privacy and respecting their confidences. Substantial interest requires school counselors only reveal sensitive information to educators who are in a position to benefit the student if they have the shared information. Qualified privilege protects educators when sharing unflattering information about a student to fulfill our obligations to educate and care for the student. Professionalism requires us to choose our words judiciously in an effort to maintain optimal communication with parents and students. Failure to recognize the power of words in conveying difficult information diminishes opportunities for growth and moves people away from rather than toward good resolutions.