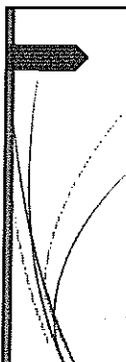


Counseling Administrative Summit

"Ethical Concerns & Legal Issues In School Counseling"
March 11, 2016



Mandatory Reporting

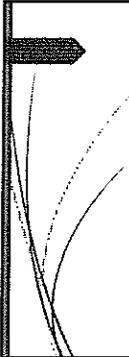
- Section 26-14-3
- Mandatory reporting.
- (a) All hospitals, clinics, sanitariums, doctors, physicians, ... public and private K-12 employees, school teachers and officials, ..., pharmacists, ..., mental health professionals, employees of ... institutions of postsecondary and higher education, members of the clergy, ..., when the child is known or suspected to be a victim of child abuse or neglect, shall be required to report orally, either by telephone or direct communication immediately, followed by a written report, to a duly constituted authority.



Mandatory Reporting

- (g) Commencing on August 1, 2013, a public or private employer who discharges, suspends, disciplines, or penalizes an employee solely for reporting suspected child abuse or neglect pursuant to this section shall be guilty of a Class C misdemeanor.

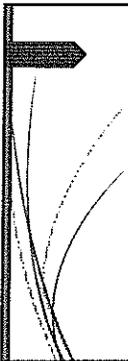
This provides protection from retaliation for the reporter.



On the practical side...

Teamwork and Good Communication Patterns are essential.

This includes all on the "Educational Team": principals, teachers, counselors, bus drivers, lunchroom workers, etc.



Confidentiality vs. Privileged Communication

Under the broader heading of "information sharing"...

- Confidentiality is an ethical constraint.
- Privileged communication is a legal standing.

"Privileged communication ceases at the school house door."



Related Information Issues

Important principles:

- "in loco parentis"
- Substantial interest or the need to know
- Qualified privilege

Subpoenas and the "need to know"

Sample case: N.C. vs. Bedford Central School District, N.Y
<https://www.schoolcounselor.org/magazine/blogs/september-october-2005/in-loco-parentis-substantial-interest-and-qualif>

Bullying

- Section 16-288-4
- Duties of schools.
- Each school shall do all of the following:
 - (1) Develop and implement evidence-based practices to promote a **school environment** that is free of harassment, intimidation, violence, and threats of violence.
 - (2) Develop and implement evidence-based practices to **prevent harassment, intimidation, violence, and threats of violence** based, as a minimum, on the criteria established by this chapter and local board policy, and to intervene when such incidents occur.

Bullying (cont.)

- (3) Incorporate into civility, citizenship, and character education curricula **awareness** of and sensitivity to the prohibitions of this chapter and local board policy against harassment, intimidation, violence, and threats of violence.
 - (4) Report statistics to the local board of actual violence, submitted reports of threats of violence, and harassment. The local board shall provide the statistics of the school system and each school in the school system to the department for posting on the department website. The posted statistics shall be available to the public and any state or federal agency requiring the information. The identity of each student involved shall be protected and may not be posted on the department website.
- (Act 2009-571, p. 1674, §6.)

Do not be indifferent.



Counselors are Trained Professionals
In...

- Mental Health Issues
- Communication
- Family Concerns
- Behavioral Interventions
- Career/Vocational Counseling
- Legal and Ethical Concerns



For more information or follow-up, contact...

- flturner@isu.edu 256-782-5180

Resources:

- Codes of Ethics
<http://alabamacounseling.org/ethics.html>
- Anti-Harassment Policy (Bullying)
<http://www.alsde.edu/sec/pss/Laws/Model%20Anti-Harassment%20Policy%20Memo.pdf#search=Anti-Harassment%20Policy>
- "Legal Issues for Alabama Counselors"
<http://alabamacounseling.org/publications.html>

Brief Summary of Alabama Mandatory Reporting
Professionals Required to Report

Ala. Code § 26-14-3

Reports are required from all of the following:

Hospitals, clinics, sanitariums, doctors, physicians, surgeons, medical examiners, coroners, dentists, osteopaths, optometrists, chiropractors, podiatrists, pharmacists, physical therapists, and nurses, public and private K-12 employees, teachers, and school officials, peace officers and law enforcement officials, social workers, daycare workers or employees, mental health professionals, employees of public and private institutions of postsecondary and higher education, members of the clergy, ny other person called upon to render aid or medical assistance to a child.

Reporting by Other Persons

Ala. Code § 26-14-4

Any other person who has reasonable cause to suspect that a child is being abused or neglected may report.

Standards for Making a Report

Ala. Code § 26-14-3

A report must be made when the child is known or suspected of being a victim of abuse or neglect.

Privileged Communications

Ala. Code §§ 26-14-3; 26-14-10

Only clergy-penitent and attorney-client privileges are permitted.

Inclusion of Reporter's Name in Report

The reporter is not specifically required by statute to provide his or her name in the report.

Disclosure of Reporter Identity

Ala. Code § 26-14-8

The department will not release the identity of the reporter except under court order when the court has determined that the reporter knowingly made a false report.

Cases

1. An elementary counselor received a subpoena to appear at a child custody hearing related to a child in his school that he had been counseling. The counselor conferred with his principal who arranged for the counselor to meet with the school board attorney. The attorney advised the counselor that because of one of the child's parents had caused the subpoena to be issued, the parent had waived any privacy rights related to the counseling and that the counselor had legal obligation to attend the hearing and to answer any factual question posed to him regarding his counseling sessions with the student. The attorney further cautioned the counselor not to answer any questions related to his opinion regarding the competency of either parent or regarding which parent should be awarded custody. The counselor told the attorney that he would not attend the hearing and would not answer any questions because the Ethical Standards for School Counselors (American School Counselor Association, 1998) required him to keep all counseling sessions confidential.
2. A school counselor is on the witness stand at a trial. An attorney asks the counselor to repeat statements made to the counselor by a student in a confidential counseling session. The school counselor is not licensed by the state as a "professional counselor" and there is no statute in the state granting privilege to communications between clients and school counselors. The counselor replies to the attorney that he does not believe he should reveal the information because it was communicated in a counseling session in which the student expected that he would have privacy and believed that the counselor would keep the information confidential. After the attorneys argue with each other regarding whether the counselor should be required to reveal the information as a matter of law, the judge explains to the counselor that he must answer the questions. In an effort to get the judge to change his mind, the counselor then asks the judge if he could explain the importance of keeping counseling sessions confidential.
3. The mother of an enrolling elementary school student tells the counselor that if the child's father requests information from the counselor regarding their daughter, the counselor must not give him any information because the mother has custody of the child. The counselor explains that, unless the father's legal rights have been terminated (which is more than a custody order), the school has a policy of providing the same information to noncustodial parents as is given to custodial parents. When the mother offers a copy of the custody order to the counselor as proof that the father is not entitled to any information, the counselor asks the mother to see the principal regarding the matter.
4. A high school student tells a counselor that she has heard students talking about parties they have attended at which alcohol is served that are being held at a history teacher's home, and the teacher is identified. The student says she has never participated in the parties, but believes the other students stories. The counselor questions the student about details and is satisfied that the parties may be occurring. The student gives the counselor the names of four students who have said they have attended the parties, but insists that the counselor not tell anyone that she told the counselor. The counselor agrees to keep the identity of the student confidential, if possible, and informs the student he will report the information, the history teacher's name, and the four students' names to the principal. The counselor gives the principal the information and the principal asks which student gave the details to the counselor. The counselor tells the principal that he would rather not identify the student unless it becomes necessary.