



School Social Work Association of America  
Resolution Statement

**SCHOOL SOCIAL WORK & THE PRIVACY OF MINORS**

**Introduction**

The NASW Code of Ethics does not distinguish between adults and minors as clients. This is especially problematic for school social workers, because the vast majority of students are minors. The purpose of the School Social Work Association of America (SSWAA) Ethical Guideline Series is to provide general principles for practice by school social workers. They are not intended to provide advice about specific situations nor should they be considered a substitute for ethical and/or legal consultation.

**Ethical Issues**

- What are the ethical and legal rights of minor students to privacy and confidentiality, self-determination, and informed consent?
- How should a school social worker resolve conflicts between the ethical and legal rights of minors in schools?
- What are the legal and ethical rights of parents/guardians to be informed of important activities their children are participating in?
- What ethical and legal responsibilities do school social workers have to parents/guardians, especially if they conflict with the wishes of their minor children?
- For what specific actions do parents need to be involved as third parties?
- Under what circumstances can and should school social workers share confidential, student-client information with parents and others?

How can school social workers make consistent, ethical decisions in the best interests of their clients when confronted with competing ethical values and interests?

**Family Foundations**

Families form the foundation of human relationships for children. Ideally, these relationships mature as children grow into adolescence and adulthood. Regardless, parents have legal and moral rights, roles and responsibilities for their children, which cannot be exercised and fulfilled unless they are cognizant of their children's activities and needs. School social workers often work to empower parents with the knowledge and skills to act in the best interests of their children.

At the same time, part of healthy human growth includes the gradual development of autonomy from parents, in order for children to grow to become independent adults. Schools are an important environment in which that autonomy is developed as students move through elementary, middle and high school. That autonomy must necessarily extend into the social worker-client relationship, including privacy and confidentiality, self-determination, and informed consent, if that relationship is to be successful.

**Legal Parameters**

Many areas of social work deal with minors, including child welfare, alcohol and other drugs (AOD), mental health, and juvenile justice. Most states grant privacy and other rights to minors at certain ages for specific services. For instance, states may grant minors access to the services listed below (under specified conditions) without parental knowledge and/or consent:

- AOD assessment and treatment,

- Mental health assessment and treatment,
- Family planning services,
- Legal counsel in both juvenile and adult court proceedings, and
- Right to make life decisions in family and child welfare courts.

These kinds of rights may be tied to the minor being a minimum age, often 12 or 14 years old, as determined in state law. For the most part, states do not have similar legal guidelines regarding mental health services to students in schools. However, to the extent that school social workers provide parallel or similar services in schools, these age guidelines can serve as reference points in making ethical decisions about students' rights to privacy. Adolescents, however, vary widely in their levels of maturity and decision-making skills, so age should not be the sole determinant for school social workers seeking to ethically balance minor students' rights to privacy and parents' rights to direct the activities of their children.

### **Informed Consent**

Informed consent needs to be considered in both its ethical and legal contexts. Ethically, social workers are expected to obtain informed consent from their clients or their client's authorized representative prior to providing services (NASW Code of Ethics - 1.03). From a legal standpoint, a minor is not considered capable of giving informed consent and the assumption is that a parent must authorize services for a minor, unless otherwise specified in law (see the Guttmacher Institute for states' health-related consent laws).

Parents explicitly and implicitly authorize their children to attend school and to be involved in school activities. Consequently, it is important to review active vs. passive parental consent. Active consent involves notifying the parent of the proposed service for his/her child and obtaining the parent's written consent prior to beginning that service. Passive consent involves the school annually notifying all parents of a service that is available to students and directs the parent to contact the school, if the parent does not want his/her child to receive those services. If procedures for passive parental consent are not established in local school district policy, school social workers would be wise to seek active consent under most circumstances.

Absent state laws that establish legal parameters for minors to consent for specific services, a student's age, maturity, cognitive functioning, and mental health should be the primary considerations when developing guidelines regarding consent for counseling and other school social work services.

In order for consent be informed, there are three general criteria:

- Consent is given with understanding, i.e., the student knows the risks and alternatives;
- Consent is given with competence, i.e., the student is not too young, is not cognitively disabled or mentally ill; and
- Consent is given voluntarily, i.e. the student has not been coerced or misled. (Advocates for Youth, 2007).

If a student is not able to give consent consistent with these three criteria, this should lead the school social worker to the conclusion that parental consent is necessary prior to the delivery of services.

### **Professional Association Guidance**

Kopels & Lindsey (2006) have observed that school social workers sometimes receive contradictory guidance from different professional associations. Both the National Association of Social Workers (NASW) and the School Social Work Association of America (SSWAA) have issued position statements regarding school social work and confidentiality. NASW's position statement (1991) stresses the multiple parties to whom school social workers have responsibilities, i.e., the student, parents, school colleagues,

and the greater community. In fact, the position statement refers to all of these parties as clients: The school social worker has ethical obligations to more than one client in any given situation. These clients include the student, parents, school personnel, and community.... This multiplicity of clients contributes to the complexity of decision making about confidentiality for school social workers.... The school social worker's responsibility to maintain the students' confidentiality must be balanced with the responsibility to the parents and to school administrators.

The School Social Work Association of America's position statement (2001) acknowledges the school social worker's responsibilities to the family and school-community, but it gives greater weight to the student as the primary client: Information should be shared with other school personnel only on a need-to-know basis and only for compelling professional reasons. Prior to sharing confidential information, school social workers should evaluate the responsibility to and the welfare of the student. The responsibility to maintain confidentiality also must be weighed against the responsibility to the family and the school community. However, the focus should always be on what is best for the student.

### **Recommendations to Guide Practice**

1. School social workers should utilize an ethical decision-making model to help resolve ethical dilemmas (e.g., Raines, 2008 or Strom-Gottfried, 2008). They should employ the chosen model consistently when confronting ethical dilemmas and seek appropriate ethical or legal consultation when necessary.
2. School social workers should stay abreast of relevant state and federal laws about the rights of minors regarding such issues as AOD treatment, mental health, or sexual health.
3. School social workers should work to establish appropriate local school district policies to help guide practice across the helping professions.
4. School social workers should seek out creative, consensus or compromise decisions that include all vested constituencies (e.g., parents, school administrators, students & teachers).
5. School social workers should take steps to proactively avoid ethical dilemmas by orienting students to professional limitations and responsibilities related to minors on a regular basis.
6. School social workers should continue to be involved in professional development opportunities for ethical dilemmas and their clinical implications.
7. School social workers should consider how any decision might affect the primary parent-child relationship for the long-term.
8. School social workers should think about what is in the "best interests" of the student, especially potentially adverse consequences.
9. School social workers should ponder their own ethical/legal liability if someone is seriously harmed by their actions or inactions.
10. School social workers should consider the student's age, cognitive functioning, emotional maturity, and mental health when evaluating the student's competence to give informed consent and make decisions.
11. School social workers should contemplate if there are analogous legal rights for comparable activities (e.g., contraceptive services or treatment for sexually transmitted infections).
12. School social workers should seek to enhance and empower the student's ability to make good decisions by having them wrestle with the ethical issues involved in their situation.

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Nic Dibble is the Consultant for School Social Work Services at the Wisconsin Department of Public Instruction (DPI). His work for the state covers the areas of child abuse and neglect, school age parents, adolescent pregnancy and suicide, domestic and dating violence, confidentiality of student records, professional ethics, mental health, and pupil services teams. Nic's primary work responsibilities involve provision of training, resource development, and technical assistance. In addition, he serves on the Wisconsin Child Abuse & Neglect Prevention Board and networks with a variety of state level organizations with the goal of better provision of services to children, youth and families. For 12 years Nic worked as a school social worker in Marathon County. Prior to joining DPI in 1991, he served as the Project Manager for the Families and Schools Together (FAST) program at Family Service in Madison. In his spare time, Nic serves on the Stoughton School Board, currently in the office of president.

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