



School Social Work Association of America Position Paper

School Social Work & the Privacy of Minors in Ethical Decision Making

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 this paper is to provide general principles for and recommendations to guide practice by school social workers. It is not intended to provide advice about specific situations nor should they be considered a substitute for ethical and/or legal consultation.

Ethical Issues

- Legal and ethical rights of minor students to privacy and confidentiality, self-determination, and informed consent,
- Legal and ethical rights of parents/guardians to be informed of important activities in which their children are participating,
- Legal and ethical responsibilities of school social workers to the wishes of parents/guardians, if they conflict with the wishes of their minor children, and
- Management of these competing ethical values and interests.

Family Foundations

As laid out in the Supplemental Ethical Standards for School Social Work Practice (SSWAA, 2021), “School social workers encourage the participation of parents in decisions that affect their children and strive to empower parents with the knowledge and skills to act in the best interests of their children”. 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.

Educational Records Access and Disclosure

School social workers are obligated to follow local, state, and federal laws and policies related to educational records access and disclosure. In addition to these laws, school social workers must consider ethical obligations, such as the responsibility to maintain client confidentiality and encourage

client self-determination. As laid out in the NASW Code of Ethics 1.07(c), “Social workers should protect the confidentiality of all information obtained in the course of professional service, except for compelling professional reasons.” This expectation does not apply when disclosure is necessary to prevent serious, foreseeable, and imminent harm to a client or others, including the mandated reporting of child abuse and neglect. Parents and guardians generally have the right to access educational records, though this does not include sole possession records or personal memory aids not revealed to others (34 CFR 99.3 & 34 CFR 99.4).

Since school social workers work with teams of adults, inside and outside of the school building, obligations relating to both educational records and consent and assent to disclose student and family information should be considered in tandem.

Minor Access to Services

Many areas of social work deal with minors, including child welfare, alcohol and other drugs (AOD), mental health, and youth justice. Most states grant privacy and other rights to minors at certain ages for some 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 (e.g., 12 or 14 years old) as determined in state law. See the Guttmacher Institute for states’ health-related consent laws for minors at www.guttmacher.org.

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 valid informed consent from their clients or an appropriate third party 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.

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 their child and obtaining the parent’s written consent prior to beginning that service. Passive consent involves the school annually notifying all parents of services that are available to students and directs the parent to contact the school, if the parent does not want their child to receive some or all of those services. The optional use of passive consent in schools is legally established in the 1984 federal regulations of the Protection of Pupil Rights Amendment ([CFR 98.4](http://CFR98.4)). Ethical implementation of passive consent procedures requires that

information provided to parents be as complete as is used with active consent. 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. The Supplemental Ethical Standards for School Social Work Practice (SSWAA, 2021) indicates that, "School social workers may provide services to mature minor students without active consent from parents where legally permissible and consistent with local school district policy and practice."

In order for consent be informed, there are three general criteria provided by Raines & Dibble (2021):

1. Consent is given with understanding, i.e., the student knows the risks and alternatives;
2. Consent is given with competence, i.e., the student is not too young or immature, does not have a significant intellectual disability or a significant mental health challenge; and
3. Consent is given voluntarily, i.e., the student has not been coerced or misled.

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.

Informed Consent and Electronic Searches

The NASW Code of Ethics 1.03(i) states that, "Social workers should obtain client consent before conducting an electronic search on the client." This is unless a search would protect the client from serious, foreseeable, and imminent harm or for compelling professional reasons. In a school setting, school social workers should consider how school policies related to student use of the internet, school devices, or electronic monitoring systems interact with the obligation to protect student confidentiality.

Affirming and Support Student Identity

One of the most important and intimate aspects of self-determination is a person's identification of their sexual orientation and gender. That discovery typically occurs during the school years and may be quite difficult for people who are not heterosexual and/or do not identify with the gender assigned them at birth, especially if the process of self-discovery is not supported by their families and friends. (Hall et al., 2021; What We Know Project, Cornell University, 2016; The Trevor Project, 2022). Laws or school district policies that require parental notification for students who may be LGBTQ+ directly challenge social work's ethical standards of self-determination, privacy and confidentiality. School social workers who practice in school districts with these laws or school district policies should notify students when they begin working with them about any circumstances that require disclosure of students' information, including LGBTQ+ status. School social workers should be prepared to refer students to other professionals with whom the student may have a greater confidentiality established in law.

Contradictory 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 (2008) 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, meaning the school social worker has ethical obligations to more than one client in any given situation. To address this ambiguity, the Supplemental Ethical Standards for School Social Work Practice (2021) clarify that school social workers have a primary ethical responsibility to students and secondary ethical responsibilities to other stakeholders.

Recommendations to Guide Practice

1. Students should be included in, and even lead, decisions about them to the extent possible in any given situation. 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. School social workers should be mindful that over-involvement with a student-client can disempower them.
2. School social workers should be familiar with the Supplemental Ethical Standards for School Social Work Practice (SSWAA, 2021), the NASW Code of Ethics, School Social Workers and Confidentiality (SSWAA, 2017), School Social Workers and Confidentiality (NASW, 2001) and other related professional publications regarding the privacy of minors such as 8 Ethics Tips for Social Workers Who Practice in School Settings.
3. School social workers should utilize an ethical decision-making model to help resolve ethical dilemmas (e.g., Raines & Dibble, 2021). They should employ the chosen model consistently when confronting ethical dilemmas and seek appropriate ethical or legal consultation when necessary.
4. School social workers should stay abreast of relevant state and federal laws regarding practice in schools (e.g., mandatory reporting of suspected child maltreatment, duty to warn in situations involving potential harm, threat assessment procedures, response to subpoenas, educational records) and about the rights of minors regarding such issues as AOD treatment, mental health, gender identity, or sexual health.
5. School social workers should seek out creative, consensus or compromise decisions that include all vested constituencies (e.g., parents, school administrators, students & teachers) and work to establish appropriate local school district policies to help guide practice across the helping professions. .
6. School social workers should take steps to proactively avoid ethical dilemmas by orienting students to professional limitations and responsibilities related to minors at the beginning of and, as needed, throughout professional relationships. When describing limits on confidentiality, school social workers should come from a place of caring rather than a legal obligation (Advocates for Youth, 2012) and avoid using the word "except."
7. School social workers should continue to be involved in professional development opportunities for ethical dilemmas and their clinical implications.
8. School social workers should consider how any decision might affect the primary parent-child relationship for the long-term, keeping in mind that parents and caregivers are generally in the child's life longer than school staff members.
9. School social workers should think about what is in the "best interests" of the student with

consideration to potentially adverse consequences and various biases and stereotyping that may impact their perceptions.

10. School social workers should ponder their own ethical and legal liability if someone is seriously harmed by their actions or inactions.
11. 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/assent and make decisions.
12. School social workers should contemplate if there are analogous legal rights for comparable activities (e.g., contraceptive services or treatment for sexually transmitted infections).

Provide evidence-based education, behavior and mental health services

- School social workers should consider state and federal educational records laws and school district policy when determining if and when to share information, in addition to ethical considerations and consent.
 - Family Educational Rights and Privacy Act (FERPA) - <https://www.ecfr.gov/current/title-34/subtitle-A/part-99>
 - Individuals with Disabilities Education Act (IDEA) - <https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-300?toc=1>
 - Protection of Pupil Rights Amendment (PPRA) - <https://www.ecfr.gov/current/title-34/subtitle-A/part-98#98.4>

Promote a school climate and culture conducive to student learning and teaching excellence

- School social workers should provide training and consultation to school systems and school staff in the area of confidentiality, ethics, professional boundaries, and educational records laws and policies when possible. Materials for training could include such resources as:
 - Local District Staff Handbook
 - State Teacher Standards
 - Local, state, and federal educational records laws and policies
 - National Education Association (NEA) Code of Ethics - <http://www.nea.org/home/30442.htm>
 - Venet, Alex S. (2019). "Role-clarity and boundaries for trauma-informed teachers," Educational Considerations, 44 (2) Retrieved from <https://doi.org/10.4148/0146-9282.2175>

Maximize access to school-based and community-based resources

- School social workers should build and improve a school's mental health referral pathway, including clear referral processes and information for students and caregivers on how and when information will be shared.

- Now Is The Time Technical Assistance Center. (2015). School Mental Health Referral Pathways (SMHRP) Toolkit. Retrieved from <https://dm0gz550769cd.cloudfront.net/shape/78/784c6b66e4094be6a40e99b4f9d14ab6.PDF>
- School social workers are in a good position to support the creation of Memoranda of Information (MOUs) to make clear the process for obtaining written authorization to share information, for obtaining consent and assent, and for other logistical matters of schools and agencies working together to support students.
 - The Wisconsin Department of Public Instruction. (2016). Community Mental Health providers in Schools: Guidelines for Schools. Retrieved from <https://dpi.wi.gov/sites/default/files/imce/sspw/pdf/mhmouguidancedoc.pdf>

Conclusion:

School social workers primary clients are minor students, which poses additional considerations related to client privacy in ethical decision-making. School social workers must consider both legal and ethical obligations when confronted with ethical dilemmas involving students, while both promoting the individual welfare of students, the interests of parents/guardians, and of the interests of the greater school-community.

SSWAA is proud to offer school social workers and related professionals, training and tools to support their practice, as indicated in the recommendations above. Continue to access the SSWAA website, SSWAA professional development opportunities and SSWAA Board to meet your needs.

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Approved by the Board of Directors, August 22, 2022

Suggested citation: Dibble, N., & Incitti, J. (2022). School Social Work and the Privacy of Minors. School Social Work Association of America.