Legal Rights of Pregnant Teens and Legal and Ethical Considerations for the Public School Counselor

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School Counselors serve as the gateway for students to access social, legal, and medical services.
Janes’s Due Process

JANE’S DUE PROCESS
Ensuring legal representation for pregnant minors in Texas
Our Services

- 24-hour hotline
- Statewide attorney referral network
- Information on:
  
  Judicial Bypasses
  
  Emancipation
  
  Funding for sonograms as needed for court
  
  Title IX
History of Jane’s Due Process

- Founded in 2001 after passage of parental notification law
- In 2005, parental consent law took effect
- Numerous attempts to change law since then
  - Venue requirements
  - Burden of proof – “clear and convincing”
  - Back to notification with no exceptions and no bypass provisions
  - Out judges granting bypasses
Judicial Bypass Clients (2010)

- 25% were orphans, had parents outside of the country, or were unable to contact either parent
- 24% feared being kicked out of the home or disowned for being pregnant
- 20% reported having experienced emotional abuse from parent or guardian
Referral Sources

- Clinics (68%)
- Web (13%)
- Friends/Family (11%)
- The rest come from teachers, school counselors, school nurses and social service agencies
Rural v. Urban

- 254 Counties
- 17 Counties with Abortion Provider
- Minors in rural areas travel to urban areas or go to New Mexico
How to Apply for a Judicial Bypass

- Minor calls 24-hour hotline for intake
- Makes appointment for sonogram & pregnancy options counseling at clinic
- Calls hotline back for free attorney
- Meets with judge and attorney
- Hearing is private and completely confidential
Grounds for Judicial Bypass

- Mature and sufficiently well informed about her pregnancy options to make decision without a parent involved
- Not in her best interest to notify parent
- Notification will lead to physical, sexual or emotional abuse
Emancipation

- Being emancipated in Texas is possible but extremely difficult.

- Common misconception – Having a baby does not mean minor is automatically emancipated.
Emancipation Requirements

- A minor must be:
  - At least 16 years old and living separate from her parents OR at least 17 years old
  - Financially self-supporting and managing her own money
  - Able to convince a judge that it is in her best interest to sever all ties, including their responsibility to support her
Title IX

- It is illegal for any minor to be forced out of her school or any educational program because she is pregnant, because she is a parent or because she has had an abortion.

- She cannot be prevented from participating in:
  - Honors - Student Government
  - AP - Sports
  - Homebound Classes
  - Band
Main Take-Aways

- Emancipation is tough to get in Texas.
- Minor has a right to apply for judicial bypass.
- Schools can’t discriminate against pregnant and parenting minors.
Legal Issues for the School Counselor

**Parental Rights**
- Right of access to child’s educational records
- Right to make most medical and upbringing decisions for their child
- Right to student records maintained by a school district

**Student Rights**
- Limited right of privacy
- Right to consent to medical treatment regarding pregnancy
- Right to access judicial bypass proceeding
- Limited right to confidentiality of counseling services
Constitutional Privacy Right

- A child is has rights under the Constitution.

- The constitutional rights of children cannot be equated with those of adults because of:
  - the peculiar vulnerability of children;
  - their inability to make critical decisions in an informed, mature manner; and
  - the importance of the parental role in child rearing.

- States validly may limit the freedom of children to choose for themselves in the making of important, affirmative choices with potentially serious consequences.

- In regard to abortion, the Court requires that the States who require the consent of a pregnant minor’s parent before administering an abortion must also provide an alternative procedure whereby authorization for the abortion can be obtained—judicial bypass.

School Counselors

• School counselors
  • School Counselors – SBEC certified
  • Licensed Professional Counselors (LPCs)

• Different rules apply depending on the license or certificate held.

• Counseling records are among those school records to which parents have a legal right of access with narrow exceptions.

• The school counselor must navigate the delicate balance between a student’s right to privacy and the parent’s right to information about their child.
Questions to consider

- If a pregnant minor has the right to a judicial bypass without parent notification, can a counselor nonetheless notify a parent of a minor’s pregnancy?
- If a student seeks counseling about abortion, rather than pregnancy, are different rights in play?
- What effect, if any, does the judicial bypass process have on a parent’s right to access student education records?
American School Counselor Association (ASCA) Ethical Standards

- Each person has the right to privacy and thereby the right to expect the counselor-student relationship to comply with all laws, policies, and ethical standards pertaining to confidentiality in the school setting.

ASCA Ethical Standards for School Counselors
ASCA Ethical Standards

A.2 Confidentiality—Professional school counselors:
- Inform individual students of the purposes, goals, techniques and rules of procedure under which they may receive counseling.
- Disclosure includes the limits of confidentiality in a developmentally appropriate manner.
- Explain the limits of confidentiality in appropriate ways.
ASCA Ethical Standards

The nature of confidentiality in schools is complicated!

Consider each case in context. Keep information confidential unless legal requirements demand that confidential information be revealed or a breach is required to prevent serious and foreseeable harm to the student.

- **Serious and foreseeable harm** must be determined on an individualized basis, considering the student’s developmental and chronological age, the setting, parental rights and the nature of the harm.

- The school counselor must understand the need to balance a student’s right to make important choices, capacity to give informed consent and the parent’s legal rights and responsibilities to protect the student and make decisions on her behalf.
ASCA Ethical Standards

- The School Counselor:
  - Promotes the autonomy and independence of students
  - Uses appropriate and least intrusive methods if confidentiality is breached
  - Protects the confidentiality of students’ records
    - Transmits sensitive information electronically in a way that is untraceable to students’ identity.
    - Delivers critical information in person
ASCA Ethical Standards

- Danger to Self or Others
  - Inform parents/guardians and/or appropriate authorities when a student poses a danger to self or others.
  - Report risk assessments to parents where there are indicators of the need to act on behalf of a child at risk;
  - Do not release a student who is a danger to self or others without appropriate support for the student.
ASCA Ethical Standards

- **Student Records**

  - Maintain and secure records necessary for rendering professional services to the student as required by law and school procedure

  - Keep sole-possession records or student case notes separate from students’ educational records

  - Recognize the limits of sole-possession records
    - memory aid for the creator only
    - may be subpoenaed; may become educational records
ASCA Ethical Standards

- **Parents/Guardians**
  - Inform parents/guardians of the confidential nature of the counseling relationship between the counselor and student.
  - Collaborate with parents/guardians to the extent possible.
  - Respect the confidentiality of parents/guardians as reasonable to protect the best interest of the student being counseled.
  - In cases of divorce or separation, exercise a good-faith effort to keep both parents informed (or follow court orders), maintaining focus on the student.
Code of Ethics for Licensed Professional Counselors

- **General Ethical Requirements:**
  - The LPC shall provide counseling treatment intervention only in the context of a professional relationship. A licensee shall inform an individual in writing before services are provided of the limits on confidentiality.
  - A licensee may take reasonable action to inform medical or law enforcement personnel if the licensee determines that there is a probability of imminent physical injury by the client to the client or others or there is a probability of immediate mental or emotional injury to the client.
Code of Ethics for LPCs

- Confidentiality and Required Reporting
  - Communication between an LPC and client and the client's records, however created or stored, are confidential under the provisions of the Texas Health and Safety Code, Chapter 611

- An LPC may disclose confidential information:
  - to a governmental agency if the disclosure is required or authorized by law (e.g. child abuse reporting)
  - to medical or law enforcement personnel if there is a probability of imminent physical injury by the patient to self or others or there is a probability of immediate mental or emotional injury to the patient;
  - To a parent if the patient is a minor, or a guardian if the patient has been adjudicated as incompetent to manage the patient's personal affairs;
Sec. 611.0045. RIGHT TO MENTAL HEALTH RECORD.

A patient or person acting on the patient's behalf is entitled to have access to the content of a confidential record made about the patient.

Except: Where the LPC determines that disclosure would be harmful to the patient's physical, mental, or emotional health.
QUESTION: Does a parent have unrestricted access to a student’s counseling records under Chapter 26 of the Education Code?

ANSWER:

- FERPA allows access to all records, except notes and memoranda made solely for use of the maker, to jog memory.
- Within that category of records, only counseling records of a Licensed Professional Counselor may be withheld in those cases where disclosure would be harmful to the patient’s physical, mental or emotional health.

Texas Family Code

- A professional who has cause to believe that a child has been abused, neglected or is a victim of the crime of Indecency with a Child, the professional must report such within 48 hours the professional first suspects any of the above occurrences.

- A professional may not delegate to or rely on another person to make the report!

- Q: When is a child’s pregnancy suggestive of abuse?

Tex. Fam. Code § 261.101
The parent of a student is entitled to access to ALL written records of a school district concerning the parent’s child, including:

1. Attendance records
2. Test scores
3. Grades
4. Disciplinary records
5. Counseling records
6. Psychological records
7. Applications for admission
8. Health and immunization information
9. Teacher and counselor evaluations
10. Reports of behavioral patterns

Family Educational Rights and Privacy Act (FERPA)

- A parent or eligible student must be given the opportunity to inspect and review their student's education records.

- “Education records” are those records, files, documents, and other materials which contain information directly related to a student; and are maintained by an educational agency or institution or by a person acting for such agency or institution.
  - Counseling records
  - E-mails
  - Any documents maintained by a public school district
“Education records” are not:
- records in the sole possession of the maker and which are not accessible or revealed to any other person except a substitute;
- records maintained by law enforcement;
- records of a student who is 18 or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, made, maintained, or used only in connection with the provision of treatment to the student.
Judicial Bypass/Parental Notice

- The **Texas Family Code** allows a child to consent, without the additional consent of a parent, to medical, psychological, and surgical treatment if the child is unmarried and pregnant and consents to hospital, medical, or surgical treatment, other than abortion, related to the pregnancy. *Tex. Fam. Code § 32.003.*

- However, a licensed physician or psychologist may, with or without the consent of a child who is a patient, advise the parents, managing conservator, or guardian of the child of the treatment given or needed by the child. *Tex. Fam. Code § 32.003.*

- Section 33.002 of this Code does not allow a physician to perform an abortion on a pregnant, unemancipated minor without parental consent UNLESS a court authorizes the minor to consent to the abortion. *Tex. Fam. Code. § 33.002.*

- Judicial bypass is the alternative court-issued allowance of an abortion that may be pursued without notification to her parents. *Tex. Fam. Code § 33.003 (a) & (k).*
Judicial Bypass v. Parent Notice

Discussion

- If a pregnant minor has the right to a judicial bypass without parent notification, can a counselor nonetheless notify a parent of a minor’s pregnancy?
- If a student seeks counseling about abortion, rather than pregnancy, are different rights in play?
- What effect, if any, does the judicial bypass process have on a parent’s right to access student education records?
Points to Remember

- A parent’s federal and state law right to access to educational and medical records is triggered only upon request by the parent.

- The Family Code’s required notification of suspected sexual abuse of a child is not satisfied by notifying the parent of a child.

- Use a balanced approach, exercise reasonable professional judgment and keep the student’s best interests in mind.
Thank you for all of your work on behalf of Texas students

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