

Notebook on Ethics, Legal Issues, and Standards for Counsellors

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I am delighted to welcome Cameron Symons to the Notebook. Cameron presented an informative and interactive session on counsellor recording keeping at CCA Conference 2004 in Winnipeg. He generously accepted my invitation to transform his presentation on this important topic into an article for this edition of the Notebook, Cameron is a former school counsellor currently teaching in the Faculty of education at Brandon University. As always, I invite you to follow his example and consider making your contribution to the Notebook

Record Keeping: Ideas for Counsellors

by

Cameron Symons

Counsellors' record keeping practices are increasingly governed by legislation. In some provinces, new Freedom of Information and Protection of Privacy legislation and Personal Health Information acts have given counsellors new guidelines about the way they keep records. The federal Youth Criminal Justice Act will also influence counsellors' practices on record keeping. For school counsellors, legislation regarding the administration of public schools adds other imperatives. Some provinces have synthesized these various legislative requirements into policy statements that provide counsellors with a guide for the management of their counselling records.

In schools, pupil records are typically held in three areas: the cumulative file in the main office; the young offender file if one exists, held in a secure location by the principal; and the counselling or special education files normally maintained by the counsellor and resource teacher.

The cumulative file component includes things such as identification information, parent/guardian information, citizenship, school history, relevant health information, academic information on marks, attendance, awards, and correspondence & legal documents. Some counselling information, such as results of psychoeducational assessments that may inform programming decisions can also be included in this file.

The counselling and special education files typically include additional information such as: special education or resource information; counselling information; clinician reports, and meeting notes; referrals to other agencies; diagnostic testing results; and reports from service providers outside of the school such as hospitals and treatment facilities.

The Youth Criminal Justice Act component contains information about a young offender that may be used: to ensure compliance with a court order; to ensure the safety of staff, students and others; and to assist in the rehabilitation of the young offender.

Most legislation is in agreement that there are certain conditions under which a person may be refused access to information in a file. They are: if disclosure might cause an invasion of the privacy of a third party; if disclosure could be detrimental to the education of the pupil; if disclosure could cause physical or emotional harm to someone; or if disclosure could interfere with an enactment or investigation.

Personal Health Information legislation, (Manitoba's for example), adds additional conditions under which access may be refused. These include: if disclosure may endanger the mental or physical health or

safety of a person; if disclosure may reveal information about another person who has not consented to disclosure; if disclosure could identify a third party who supplied the info in confidence under circumstances where confidence could be expected; or if the information was compiled for legal purposes.

The Youth Criminal Justice Act demands that the offender's file must be kept separate from any other record of the young person; that no other person has access to the information except if authorized under the Act; and that the record be destroyed when the information is no longer required for the purpose for which it was disclosed.

In cases of divorced or separated parents, the Divorce Act of Canada states that "Unless the court orders otherwise, a spouse who is granted access to a child of the marriage has the right to make inquiries, and to be given information as to the health, education and welfare of the child." Provincial family law usually supports this notion as in Manitoba's legislation, for example, which states: "Unless a court otherwise orders, the non-custodial parent retains the same right as the parent granted custody to receive school, medical, psychological, dental and other reports affecting the child". (Family Maintenance Act Manitoba)

While the legislation described above is very similar from province to province, it is important to check on the specific wording of these kinds of acts in your own jurisdiction.

Counsellors are often concerned about transferring information when a student transfers to a new school. Generally, both the cumulative file, and the counselling or special education file must go to the new school. A strategy that will help give counsellors some sense of security is to retain the counselling records themselves, and place a notice in the cumulative file to the effect that counselling information exists on this student and may be obtained by contacting the counsellor directly. In this way, the records can go from professional to professional, and their security and privacy be ensured. Many schools have the parents or students, (if they are the age of majority), sign a release form to allow the transfer of these records.

Lawyer, Robert Solomon, and Consultant, Dennis Lucas have each offered suggestions about effective record keeping. These ideas include:

Keeping all entries in chronological order;

Recording information while it's fresh;

Making any alterations with a straight line, dated and initialled;

Sticking to behaviours and concise description;

Staying away from diagnosis & interpretation;

Limiting records only to directly relevant info;

Including record keeping information in your informed consent form,
Record ingredients may include:

Name and date:

Presenting issue:

Past history of issue (if not described in an earlier record);

Current status of issue changes since last visit;

Treatment/goals/homework/actions;

Check-back date/time;

Referral info: To whom, where, when, what was said;

Administrative info: timetable, credits, etc.

To ensure the protection of your students and yourself, it is important to check your employer's policies on access to information, the CCA Standards of Practice on record keeping, and the privacy legislation in your province. If no workplace policy exists, it is critical that such a policy on record keeping be created.

In some provinces, requests for information can be referred to the individual appointed as Privacy and Access Coordinator for your school board. This individual can, with input from you, decide to release the whole record, release parts of it, or deny access altogether. Parents then have the right of appeal to a provincial privacy adjudicator such as the provincial ombudsman. In provinces where these procedures are not mandated, it is important to follow the CCA policy that school counsellors should make every effort to ensure that there is a school-based procedure in place to adjudicate any requests from parents or guardians for access to counselling records.

As a proactive step to avoid misunderstanding with students and parents, it is essential to have a good informed consent form in place. A consent form used in a school setting may say something like this:

"In all discussions between us you have a right to expect that anything we talk about will remain confidential. We will respect and guard your right to confidentiality very carefully, but you need to know that there are a few cases where that may not apply. These are the situations where information may be shared with someone else:

- 1) if you ask me to speak with someone else for you or give them information you wish them to have;
- 2) If I feel that you or someone else may be in danger or in need of protection,
- 3) If a court orders the release of information,
- 4) If required by law, as in cases of child abuse.

5) To consult with another professional person in confidence to try to find solutions or answers for you.

These situations are very rare, but it is important for you to know about them.”