Current Legal and Ethical Issues in K-12 WA schools

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You will be able to...

- Review Ethical Standards for School Counselors from systems perspectives.
- Review STEPS model for challenging situations.
- Learn the most common issues for counselors.
- Review current call for revisions from ASCA Ethics Committee & WSCA responses.
- Share your experiences in a small group and provide feedback on the topics that should be updated or introduced.
The Solution to Ethical Problems in Schools (STEPS) Model for School Setting  (Stone, 2001)

1. Define the problem emotionally and intellectually.
2. Apply the ASCA and ACA Ethical Codes and the Law.
3. Consider the student’s chronological and developmental level.
4. Consider the setting, parental rights, and minors’ rights.
5. Apply the moral principles.
6. Determine your potential courses of action and their consequences.
7. Evaluate the Selected Action.
8. Consult.
9. Implement the course of action.
Moral principles (Kitchener, 1984)

- Autonomy
- Beneficence
- Nonmaleficence
- Justice
- Loyalty
Most common issues counselors experience ...

- Confidentiality
- CPS calls and follow-up
- Note taking Issues
ASCA Ethical Standard A.2.d

- Professional school counselors recognize their primary obligation for confidentiality is to the students but balance that obligation with an understanding of parents’/guardians’ legal and inherent rights to be the guiding voice in their children’s lives, especially in value-laden issues.

- Professional school counselors understand the need to balance students’ ethical rights to make choices, their capacity to give consent or assent and parental or familial legal rights and responsibilities to protect these students and make decisions on their behalf.
ASCA Ethical Standard B.2.d

- Provide parents/guardians with accurate, comprehensive and relevant information in an objective and caring manner, as is appropriate and consistent with ethical responsibilities to the student.

ASCA Ethical Standard B.2.e

- Make reasonable efforts to honor the wishes of parents/guardians concerning the information regarding the student unless a court order expressly forbids the involvement of a parent(s). In cases of divorce or separation, school counselors exercise a good-faith effort to keep both parents informed, maintaining focus on the student and avoiding supporting one parent over another in divorce proceedings.
CPS Calls and Follow-up

- Professionals required to report (RCW 26.44.030) (https://www.childwelfare.gov/pubPDFs/manda.pdf)
  
  ...Professional school personnel... has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

- The department shall make reasonable efforts to learn the name, address, and telephone number of the reporter.
Note-Taking Issues

1. Are case notes truly my own or do I have to share them if ever lawyers get involved? Do I have to testify?

2. What detail is necessary for case notes? Is it necessary to have notes on every conversation we have with students? What do we have to disclose to parents from these notes?
A.8. Student Records

Professional School Counselors

a. Maintain and secure records necessary for rendering professional services to the student as required by laws, regulations, institutional procedures and confidentiality guidelines.

b. Keep sole-possession records or individual student case notes separate from students educational records in keeping with state laws.

c. Recognize the limits of sole-possession records and understand these records are a memory aid for the creator and in absence of privileged communication may be subpoenaed and may become educational records when they are shared or are accessible to others in either verbal or written form or when they include information other than professional opinion or personal observations.
Note-talking Issues

c. Establish a reasonable timeline for purging sole-possession records or case notes. Suggested guidelines include shredding sole possession records when the student transitions to the next level, transfers to another school or graduates. Apply careful discretion and deliberation before destroying sole-possession records that may be needed by a court of law such as notes on child abuse, suicide, sexual harassment or violence.

d. Understand and abide by the Family Education Rights and Privacy Act (FERPA, 1974), which safeguards student’s records and allows parents to have a voice in what and how information is shared with others regarding their child’s educational records.
Ethical Standards for School Counselors

Preamble
The American School Counselor Association (ASCA) is a professional organization whose members are school counselors who, with specific qualifications and skills to address all students' academic, personal/social, and career development needs, provide leadership in school counseling, with unique qualifications and skills to address all students' academic, personal/social, and career development needs. Members are also school counseling program directors/supervisors and counselor educators. These ethical standards are the ethical responsibilities of school counselors. School counseling program directors/supervisors should know them and provide support for practitioners to uphold them. School counselor educators should know them, teach them to their students and provide support for school counseling candidates to uphold them.

Professional school counselors are advocates, leaders, collaborators and consultants who create opportunities for equity in access and success in educational opportunities by counseling their programs to the mission of schools and subscribing to the following tenets of professional responsibility:

- Each person has the right to be respected, be treated with dignity and have access to a comprehensive school counseling program that advocates for and affirms all students from diverse populations including: ethnic/racial identity, age, economic status, attitudes, behaviors, language, immigration status, racial orientation, gender, gender identity/expression, family type, religious/spiritual identity and appearance.
- Each person has the right to receive the information and support needed to move toward self-direction and self-development and affirmation within one’s group identity, with special care being given to students who are historically not received adequate educational services, e.g., students of color, students living at a low socio-economic status, students with disabilities and students from non-dominant language backgrounds.
- Each person has the right to understand the full magnitude and meaning of higher educational choices and how those choices will affect future opportunities.
- Each person has the right to privacy and thereby the right to expect the school counselor/student relationship to comply with all laws, policies and ethical standards pertaining to confidentiality in the school setting.
- Each person has the right to feel safe in school environments that school counselors help create, free from abuse, bullying, neglect, harassment or other forms of violence.

In this document, ASCA specifies the principles of ethical behavior necessary to maintain the high standards of integrity, leadership and professionalism among its members. The Ethical Standards for School Counselors were developed to define the nature of ethical responsibilities held in common by school counselors, supervisors of school counseling programs, and counselor educators. The purpose of this document is to:

- Serve as a guide for the ethical practices of all professional school counselors, supervisors of school counseling programs and school counselor educators regardless of level, area, population served or membership in this professional association.
- Promote self-assessment and peer evaluations regarding school counselors' responsibilities to students, parents/guardians, colleagues and professional associates, schools, communities and the counseling profession.
- Inform all stakeholders, including students, parents and guardians, teachers, administrators, community members and courts of justice, of best ethical practices, values and expected behaviors of the school counseling profession.

A.1. Responsibilities to Students

Professional school counselor:

a. Have a primary obligation to the students, who are to be treated with dignity and respect as unique individuals.

b. Are concerned with the educational, academic, social, personal and social needs and encourage the maximum development of every student.

c. Respect students' values, beliefs and cultural background and do not impose the school counselor's personal values on students or their families.

A.2. Confidentiality

Professional school counselor:

a. Informs 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. Informed consent requires competence on the part of students to understand the limits of confidentiality and the risks and benefits of counseling.
ASCA Revisions

Current Ethical Standards. Where are the gaps? Is there anything missing?
2015 09 25 14 00 ASCA SCA Ethics Revision Webinar

- https://www.youtube.com/watch?v=MsWFzt6v75A
ASCA Ethics Committee “Call for Revisions” Timeline

11/2015 – ASCA reached out to every State to review current standards and new issues.
12/2015 – WSCA sent 3 surveys and over 86 members responded.
1/2016 – WSCA submitted our survey responses to ASCA Ethics Chair, Carolyn Stone, Ph.D.
2/2016 – ASCA made note our responses were very helpful as they move to the next phase of the revision process.
3/2016 – WSCA Ethics Committee reviews with conference attendees.
3/15-4-15 – Public comment period
6/2016 – The 2016 ASCA Ethical Standards are Finalized
WSCA surveys showed counselors had concerns in these areas (Survey 1)

<table>
<thead>
<tr>
<th>Topic</th>
<th>Response Total</th>
<th>Response Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Informed Consent</td>
<td>19</td>
<td>22%</td>
</tr>
<tr>
<td>Referrals to Outside Counseling Agencies</td>
<td>21</td>
<td>24%</td>
</tr>
<tr>
<td>Use of Data</td>
<td>11</td>
<td>13%</td>
</tr>
<tr>
<td>College &amp; Career Readiness</td>
<td>6</td>
<td>7%</td>
</tr>
<tr>
<td>Social Networking</td>
<td>25</td>
<td>29%</td>
</tr>
<tr>
<td>Responsibilities to Students</td>
<td>24</td>
<td>28%</td>
</tr>
<tr>
<td>Technology</td>
<td>19</td>
<td>22%</td>
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</tbody>
</table>

Total Respondents 86
WSCA surveys showed counselors had concerns in these areas (Survey 2)

<table>
<thead>
<tr>
<th>Category</th>
<th>Response Total</th>
<th>Response Percent</th>
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</thead>
<tbody>
<tr>
<td>Managing Boundaries</td>
<td>37</td>
<td>44%</td>
</tr>
<tr>
<td>Documenting Boundary crossings including Role, Time, and Place</td>
<td>13</td>
<td>15%</td>
</tr>
<tr>
<td>Counseling in Lieu of discipline</td>
<td>49</td>
<td>58%</td>
</tr>
<tr>
<td>Special populations &amp; Issues</td>
<td>24</td>
<td>29%</td>
</tr>
<tr>
<td>Homeless Youth</td>
<td>18</td>
<td>21%</td>
</tr>
<tr>
<td>Victims &amp; Perpetrators of Dating Violence, Sexual Harassment</td>
<td>18</td>
<td>21%</td>
</tr>
<tr>
<td>Child Abuse</td>
<td>26</td>
<td>31%</td>
</tr>
<tr>
<td><strong>Total Respondents</strong></td>
<td><strong>84</strong></td>
<td></td>
</tr>
</tbody>
</table>
WSCA surveys showed counselors had concerns in these areas (Survey 3)

<table>
<thead>
<tr>
<th>Survey 3</th>
<th>Response Total</th>
<th>Response Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appropriate Theories for Schools</td>
<td>13</td>
<td>28%</td>
</tr>
<tr>
<td>Appropriate Field Practice for School Counseling Candidates</td>
<td>16</td>
<td>34%</td>
</tr>
<tr>
<td>Counselor Competence</td>
<td>15</td>
<td>32%</td>
</tr>
<tr>
<td>Theory into Practice</td>
<td>14</td>
<td>30%</td>
</tr>
<tr>
<td>Seeking Supervision</td>
<td>12</td>
<td>26%</td>
</tr>
<tr>
<td>Virtual Counseling</td>
<td>10</td>
<td>21%</td>
</tr>
</tbody>
</table>

responding: 46
Survey Responses

- Counseling in lieu of discipline: 30%
- Boundaries: 23%
- Social networking: 15%
- Responsibilities to student: 15%
- Referrals to outside agencies: 15%
- College/Career Readiness: 5%
The School Counselor’s Role

The school counselor promotes positive student behaviors to create a safe, effective learning environment for all students. It is **not the role of the school counselor to mete out punishment** but instead to **help create effective behavior** change focused on positive, healthy behaviors. To do so, school counselors:

- Lead individual and small-group counseling that encourages students to make positive behavior choices and accept responsibility for their actions
- Consult with families, teachers, administrators and other school personnel to understand developmentally appropriate student behavior and promote positive student behavior
- Design and implement positive behavior and intervention support plans for individual students, in collaboration with classroom teachers and other school behavior specialists
Collaborate with school stakeholders to develop, implement and maintain a developmentally appropriate school-wide discipline program. Serve as a mediator for student-student, student-teacher and student-family conflicts.

Coordinate and facilitate programs (mentor programs, peer support, conflict resolution and anger management programs) to assist students in developing pro-social behaviors.

Provide staff development on classroom management, student behavior and discipline.

Keep informed of school, district and state policies related to student discipline.

Advocate for best practices for school-wide discipline, including ensuring objective and equitable disciplinary practices.
The School Counselor’s Role

Summary The school counselor has specialized training and skills in promoting appropriate student behavior and preventing disruptive student behavior. The school counselor maintains nonthreatening relationships with students to best promote student achievement and development and serves as a resource for school personnel as they develop individual and school-wide discipline procedures.

The school counselor should be, by policy, designated as a neutral and resourceful consultant, mediator and student advocate.

It is not the school counselor’s role to serve as an enforcement agent but rather a significant contributor to the development of the prevention and intervention programs through which problem behaviors are managed and positive behaviors are nurtured.
A.4. Dual Relationships

Professional school counselors:

a. Avoid dual relationships that might impair their objectivity and increase the risk of harm to students (e.g., counseling one’s family members or the children of close friends or associates). If a dual relationship is unavoidable, the school counselor is responsible for taking action to eliminate or reduce the potential for harm to the student through use of safeguards, which might include informed consent, consultation, supervision and documentation.

b. Maintain appropriate professional distance with students at all times.

c. Avoid dual relationships with students through communication mediums such as social networking sites.

d. Avoid dual relationships with school personnel that might infringe on the integrity of the school counselor/student relationship.
Social Networking:

New for 2016
Group Discussion Topic
Professional school counselors:

a. **Promote the benefits of and clarify the limitations of various** appropriate technological applications. Professional school counselors promote technological applications (1) that are appropriate for students’ individual needs, (2) that students understand how to use and (3) for which follow-up counseling assistance is provided.

b. **Advocate for equal access to technology for all students, especially** those historically underserved.

c. **Take appropriate and reasonable measures for maintaining confidentiality** of student information and educational records stored or transmitted through the use of computers, facsimile machines, telephones, voicemail, answering machines and other electronic or computer technology.

d. **Understand the intent of FERPA and its impact on sharing electronic** student records.

e. **Consider the extent to which cyberbullying is interfering with** students’ educational process and base guidance curriculum and intervention programming for this pervasive and potentially dangerous problem on research-based and best practices.
A.1. Responsibilities to Students

Professional school counselors:

a. **Have a primary obligation to the students, who are to be treated** with dignity and respect as unique individuals.

b. **Are concerned with the educational, academic, career, personal and social needs and encourage the maximum development of every student.**

c. **Respect students’ values, beliefs and cultural background and do not** impose the school counselor’s personal values on students or their families.

d. **Are knowledgeable of laws, regulations and policies relating to students** and strive to protect and inform students regarding their rights.

e. **Promote the welfare of individual students and collaborate with them** to develop an action plan for success.

f. **Consider the involvement of support networks valued by the individual students.**

g. **Understand that professional distance with students is appropriate,** and any sexual or romantic relationship with students whether illegal in the state of practice is considered a grievous breach of ethics and is prohibited regardless of a student’s age.

h. **Consider the potential for harm before entering into a relationship** with former students or one of their family members.
Round Table Discussion Groups

Pre-Selected Topics

1) Social Networking 2016
2) Managing Boundaries
3) Counseling in Lieu of Discipline
Resources