

**Are You a Legally Literate School Counselor?**

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### **Abstract**

This exercise is designed to assist school counselors in assessing their knowledge of prevalent ethical and legal issues within the school setting. The aim is to highlight emerging legal and ethical dilemmas and motivate counselors to stay abreast of specific school rules and policies, as well as keep a basic understanding of state and federal laws affecting their work.

*Keywords:* school counseling, legal, ethical, federal, professional development, counselor training, morals

### **Are You a Legally Literate School Counselor?**

During recent years, school counselors have reported an increase in the number of legal issues encountered within the school setting (Hermann, 2002). In an age where lawsuits are common, students and their parents are no longer intimidated by the law. Instead, more so than ever before, students and parents are now eager to assert their legal rights and seek avenues of redress when they experience an infringement of their rights. Therefore, counselors must be aware of the prevalent legal concerns as well as properly educated on how to respond ethically and legally to the issues (Hermann, 2002). It is essential that school counselors become more legally and ethically literate in order to ensure that the legal rights of students are protected and to avoid legal entanglements whenever possible.

School counselors often face legal dilemmas related to student privacy, child abuse, and student safety (Hermann, 2002). Confidentiality can be a complex legal issue when counseling minors (Lawrence & Kurpius, 2000). Confidentiality is an ethical standard rather than a legal standard when counseling with minors, thus making it difficult for school counselors to balance confidentiality with the rights of parents. Additionally, school counselors often struggle with legal issues surrounding child abuse (Hermann, 2002). Failure to report suspected child abuse can lead to criminal and civil liability (Lawrence & Kurpius, 2000; Remley & Herlihy, 2001; White & Flynt, 2000). Child abuse related to issues surrounding sexual behavior or victimization from sexual violence may especially be difficult for school counselors because of confusion over legal specifics that distinguish between statutory rape, rape, and sexual abuse (Mitchell & Rogers, 2003). Finally, school counselors often struggle with legal issues in regards

to managing student threats of violence towards him/herself or others (Hermann, 2002). Schools counselors are legally vulnerable because of their role in determining if students pose a risk to themselves or others (Hermann & Finn, 2002). Malpractice lawsuits may result from insufficiently managing a student's threats of violence or acting without due care and attention when counseling suicidal clients.

It is virtually impossible for school counselors to know all there is to know about the laws governing their work; after all, school counselors are not lawyers. Even if they were lawyers, the government enacts new laws and amends old laws every year, and the courts' interpretations of existing laws cause the legal landscape to change frequently. Furthermore, legal mandates vary by state making it especially important that school counselors stay abreast of the current legal issues within the school counseling community. While this climate makes it difficult for school counselors to navigate the legal terrain, counselors do need to work towards a broad understanding of the legal structure affecting their professional involvement with students. By keeping abreast of the legal mandates surrounding their profession, counselors can make well-informed decisions and follow required procedures to protect themselves and their students.

So how legally literate are you? To assist in determining your legal literacy level, try the 16-item-self-assessment inventory presented below. Under no circumstances should it be assumed that the scenarios described in the Counselor Legal Literacy Inventory test are completely transferable to an actual ethical or legal dilemma.

### Counselor Legal Literacy Inventory

1. Mr. Ramsey has an appointment to see you. Your secretary tells you that as a noncustodial parent, Mr. Ramsey wants you to go over his son's cumulative record with him. Apparently, Mr. Ramsey doesn't get along well with his former wife, but he, nonetheless, is interested in finding out why his 13 year-old son, Robert, is experiencing a drop in grades. Would you share the information with Mr. Ramsey?
  - a. No
  - b. Yes, provided there is no court order in his son's file preventing such disclosure.
  - c. Yes, if his former wife (the custodial parent) agrees.
  - d. Not without the student's consent.
  
2. Jessica, a 15-year old female, explains she is having mutually consenting intercourse with her 23-year old boyfriend. She also informs you that her parents are aware of it and approve. How would you respond?
  - a. Report relationship to the police immediately because Jessica is under the age of consent when compared to the age of her partner.
  - b. Call Jessica's parents and make sure they are really aware of the relationship and approve of it.
  - c. Regardless of parental knowledge or approval of the relationship, statutory rape does not have to be reported.
  - d. Call Jessica's partner and inform him that the relationship is considered statutory rape and he could go to jail for this crime.

3. Adam, 15, has recently told you he wanted to fight another male in the grade below him. Adam frequently visits your office when experiencing a violent rage during the school day. Today, Adam is so angry with this younger male that he informs you he is going to fight him at the bus line-up when the bell rings. As the counselor, you respond by:
  - a. informing appropriate authorities about the fight to make sure they are aware of the situation and will be on hand at the bus line-up.
  - b. reporting this to the police and having Adam arrested.
  - c. talking it over with Adam without informing authorities because Adam has promised nothing would happen now that he has calmed down.
  - d. informing Adam that you have to notify appropriate authorities of the potential risk for violence and then have him temporarily removed from the school setting.
  
4. Saralena, 10-year old, shows you multiple abrasions and bruises on her legs resulting from a “spanking” purportedly administered by her father over the weekend. You know her father and you feel confident that he would never hurt his daughter without cause. Nonetheless, must you report his suspected abuse to child protective services?
  - a. Because you’re confident the father wouldn’t do such a thing, you are not required to report the abuse.
  - b. You are required to report the suspected abuse.
  - c. Because parents have the right to discipline their children how they see fit, there is no reason for you to make the report.

- d. You do not report this incident because of your doubts, but you note the suspected abuse in Saralena's file. This way, if it occurs again, you will have the documentation necessary to justify a report to child protective services.
5. Kevin, 16, comes to you excited about a possible part-time job at "Sam's Seafood Shack." He and his parents have tentatively decided that he can work 10 hours per week. Now he is wondering if he needs an employment certificate (work permit). Does he?
  - a. Yes. All youth between the ages of 14 and 16 years must have a work permit to obtain a job.
  - b. No. A 16 year-old is not required to secure a work permit.
  - c. No, as long as he works 10 hours or less during the school year, he does not need a work permit.
  - d. It does not matter. Kevin cannot work in a restaurant that serves alcohol until he is 18 years old.
6. Sondra, an 11-year old, discloses to you she is having sexual relations with her brother who takes care of her while their parents attend social outings at night. As a counselor you?
  - a. Don't report it because it will break confidentiality.
  - b. Report it immediately because the brother is in a custodial role.
  - c. Don't report because the girl consented to having the sexual relations with the brother.

- d. Don't report it until the parents are notified and have decided it should be reported to proper authorities.
7. Eloise just turned 18 and thinks she has gained the right to participate in all legal adult activities. Because she is only 18, which of the following does she not have a right to participate in?
- a. Purchase and/or use a credit card.
  - b. Sign up for the armed services.
  - c. Purchase a handgun.
  - d. Vote in state elections.
8. Jason, a senior in high school, just turned 18. Must he register with the Selective Service System?
- a. No. Registering for the "draft" was discontinued in 1976.
  - b. No, because he is a full-time student.
  - c. Actually, he should have registered at age 17.
  - d. Yes. Every male must register 30 days before or after his 18<sup>th</sup> birthday.
9. Janice, age 15, is pregnant. She and her boyfriend, Harold (18 years-old) are planning to get married and raise their child together. Janice is worried that her parents will not allow her to get married. Does she need her parents' consent to get married?
- a. No. Pregnant teens, no matter their age, do not need parental consent to get married in the United States.
  - b. No. There is no minimum age requirement for marriage.



- c. Yes. All states require minors to get parental consent if younger than 18 years old.
  - d. Actually, the fact that Harold is 18 years old eliminates the need for parental consent.
10. Joey's grandmother brings him into your office and shows you bruises all over his back and arms. She tells you that Joey's mother is abusing him and she doesn't know what to do. With this knowledge of suspected abuse, you must report this case to the proper authorities within what time period?
- a. 24 hours
  - b. 48 hours
  - c. 72 hours
  - d. Immediately
11. During an individual counseling session, Jacob, age 13, tells you that no one at school likes him, and that life just doesn't seem worth it. He mentions his father's gun in the basement and says that he could easily put an end to his misery. As a counselor, you are obligated to:
- a. schedule an outside professional counselor to come to the school to meet with Jacob immediately.
  - b. inform Jacob's parents about his apparent mental state, and ask if they have considered counseling services for Jacob.
  - c. maintain the confidentiality of the session but take detailed notes for your records.
  - d. report Jacob's potential suicide risk to Social Services.

12. An Army National Guard recruiting officer calls your office asking for the names, phone numbers, and addresses of the seniors at your school. He wants this information so that he may contact students in an effort to recruit them for his college tuition assistance program. What do you do?

- a. Nothing. This information is considered a part of the students' confidential records. The students' privacy rights prohibit you from releasing any information.
- b. You can only give out names, addresses, and phone numbers with the permission of the students or parents.
- c. This information is considered directory data, and names, addresses, and phone numbers can be released without parental consent.
- d. You may release the list of students' names, but may not give personal information such as addresses and phone numbers.

13. Casey, a 17 year old homosexual, has come to you for help with sexual orientation issues she is dealing with in school. Coming from a strict religious background, you refer Casey because this topic is in violation of your religious beliefs. Is this ethically and legally appropriate in the counseling profession?

- a. It is ethically and legally inappropriate for you, as a professional counselor, to refer an individual to another counselor based on their sexual orientation.
- b. Because it is in violation of your religious beliefs, it is ethically and legally acceptable for you, as a counselor, to refer Casey to someone who is more adequate in addressing her needs.

- c. Because you were honest with Casey about the violation of your religious beliefs, you are not violating your ethical or legal standards of the counseling profession by referring.
  - d. It was appropriate because ethically counselors are obligated to disclose to clients when they are not adequate or capable to work with clients.
14. Lukas, 17, has recently disclosed his addiction to cutting his wrist. He says he only does it when he gets angry, but he is often more angry than not. Now that Lukas has disclosed his painful events, you do not want to breach confidentiality and cause him more pain, therefore you
- a. discuss his issue of cutting and continue with the counseling process to gain more knowledge of his problem before letting appropriate authorities know.
  - b. ask Luke not to cut again and have him sign a contract.
  - c. report Luka's mutilating behavior to his parents because the student has demonstrated a potential risk of harming himself.
  - d. don't report his behavior of cutting because you do not think it is serious enough for him to harm himself.
15. You are the new head counselor at Highland Middle school. You are excited to be there and want to implement group counseling for students in the 7<sup>th</sup> grade. To find out about the needs of the students, you call the counselor who was at the school prior to your role. She informs you that the students in the 7<sup>th</sup> grade have had many cases of school violence and that it was the most prevalent issue

that should be addressed. In order to implement the violence intervention program, you:

- a. look on your student tracking system and determine which students have the characteristics of being a potentially violent student and place those kids into groups according to specific violent profiles.
  - b. put only selected classes in groups and conduct a violence intervention program with them.
  - c. implement a violence intervention program for the entire 7<sup>th</sup> grade.
  - d. provide the 7<sup>th</sup> grade teachers with a form that asks them to identify the students they think need to be in group counseling for violence intervention.
16. Ms. Simmons calls first thing in the morning. She tells you she is worried about her 10-year-old daughter, Mary. She says Mary came home from school yesterday in tears. When Ms. Simmons tried to find out what was wrong, her daughter responded, "It's really, really bad, but you don't have to worry, I've talked with my counselor." Mom is insisting that you tell her what was discussed between you and Mary. In fact, she demands you tell her. What do you do?
- a. You tell her because as a parent she has the legal right to know.
  - b. Your ethical responsibility to Mary dictates that you respectfully decline to divulge what was discussed.
  - c. You tell Ms. Simmons you will talk with Mary and if Mary consents you will be glad to share the information.

- d. You tell her that because you see so many students you really don't recall what was discussed.

### **Answers**

1. According to The Family Educational Rights and Privacy Act (FERPA), parents are granted certain rights with respect to their children's education records. After the student has turned 18, or attended a post-secondary school, these rights will transfer to the student. Under FERPA, all parents, including non-custodial parents, have the right to review their children's educational records unless a court order states the contrary or the parent signed a waiver of his or her access to the records. This law applies to any school that receives funds for any program under the Department of Education (U.S. Department of Education, 2009).

Correct Response: B.

2. From a legal standpoint, statutory rape is mutually consenting intercourse where the state has declared inappropriate age differences between partners (Garner, 2009). Statutory rape definitions for 49 states are based solely on age differences, except South Carolina which also includes coercion, persuasion, and enticement in their definition (South Carolina, 2008). Legal age of consent also varies among states; however, most states define the age of consent to be between 14 and 16 years. Most states also agree that the partners should have an age difference of 2 to 5 years for intercourse to be considered statutory rape. Additionally, most states have a law for which sexual intercourse is prohibited and considered rape if the child is at or below a specific age (Mitchell & Rogers, 2003). Interestingly counselors are not required to report statutory rape

regardless of approval and knowledge of parents. Only two states (California and Florida) currently require statutory rape to be reported under certain circumstances (Mitchell & Rogers). Correct Response: C.

3. When counselors have to determine whether or not a student is at risk for potential violence, school counselors are encouraged by ASCA and ACA ethical standards to consult with administration or colleagues before making a decision. Ethically, school counselors should respond to violence as well as work to prevent it, but school counselors must also take into account the welfare of the potentially violent student. When school counselors are put into a position to take action against potential violence, they are ethically obligated to inform the student about the actions to be taken (Hermann & Finn, 2002; ACA, 2005; ASCA, 2004). Furthermore, school administrators as well as school counselors are legally required to take appropriate action when students pose a potential risk of danger to other students (Bailey, 2001; Hermann & Finn). Both school administrators and school counselors have been held legally responsible for the failure to successfully protect students from foreseeable harm (Hermann & Finn). Many courts have clarified that if a student has threatened to do harm, then the violent acts committed by the student were foreseeable (Hermann & Finn; Hermann & Remley, 2000). Case Law currently implies that any predictor of potential violence should be taken seriously, with courts being supportive of temporarily removing the potentially harmful student from the school (Hermann & Finn). Correct Response: D.

4. If you suspect abuse, you report abuse immediately (ACA, 2005; ASCA, 2004).  
Actually, according to some states, failure to report child abuse or neglect within a certain number of hours can result in penalties or fines depending on the state law. Correct Response: B.
5. According to the United States Child Labor Laws, Kevin does not have to have an employment certificate (work permit). However, if a state law is more protective of the working child than the federal law, then the more protective law is followed. For example, many states have different restrictions or minimums for ages of employees, hours of work, and hazardous occupations (Child Labor Coalition, 2009). Therefore, if your state's laws are stricter, then the correct response for you may be different. Correct Response: B.
6. The keyword in the answer is "custodial" role. The Federal Child Abuse Prevention and Treatment Act (CAPTA), as amended by the Keeping Children and Families Safe Act of 2003, defines child abuse and neglect as, at minimum:  
*Any recent act or failure to act on the part of a parent or caretaker which results in death, serious physical or emotional harm, sexual abuse or exploitation; or An act or failure to act which presents an imminent risk of serious harm* (as cited in Child Welfare Information Gateway, 2007, p.1).  
This definition of child abuse and neglect refers specifically to parents and other caregivers. A child under this definition generally means a person who is under the age of 18 or who is not an emancipated minor (Child Welfare Information Gateway). As counselors, we are legally and ethically mandated to report child abuse immediately to the proper authorities. Correct Response: B.

7. Even though Eloise is now 18, certain restrictions still apply to what she can and cannot do. For example, while she has the right to apply for a credit card and vote, she cannot purchase a handgun until she is 21 years old (National Rifle Association of America, 2009). Correct Response: C.
8. Even though this country has not had a “draft” for quite some time, every male citizen of the United States is still required to register for the United States Selective Services within 30 days before or after his 18<sup>th</sup> birthday. Females need not register for the Selective Services System (Selective Service System, 2009). Correct Response: D.
9. In the United States, 48 out of 50 states require couples to be at least 18 years of age or older to get married without the consent of their parents. The two states who are not in that category are Nebraska who requires the couple to be at least 19 years old and Mississippi who requires the couple to be at least 21 years old to be married without parental consent. If there is a pregnancy involved, a few states may waive this requirement of parental consent, although a court approval would still be required. Furthermore, even with parental consent, some states still require court approval if person is 16 years of age or younger (Legal Information Institute, n.d.). Correct Response: C.
10. While the ACA (2005) and ASCA (2004) *Code of Ethics* states abuse should be reported immediately, many states have laws in which the abuse must be reported by a specific amount of hours of the learned abuse, or penalties and/or fines will be rendered to the counselor. Correct Response: D.



11. If a counselor has reason to believe, as a result of direct communication from a student, that the student is at imminent risk of suicide, the counselor shall, as soon as practicable, contact at least one of the student's parents to ask whether the parent is aware of the student's mental state and whether the parent wishes to obtain or has already obtained counseling for the student (ACA, 2005; ASCA, 2004). Correct Response: B.
12. Both the No Child Left Behind Act of 2001 and the National Defense Authorization Act for Fiscal Year 2002 entitle military recruiters to receive the name, address, and telephone number of juniors and seniors. Providing this information is consistent with the Family Educational Rights and Privacy Act (FERPA) which protects the privacy of student education records. Student directory information will be used specifically for armed services recruiting purposes and for informing students of scholarship opportunities. Correct Response: C.
13. According to both ACA (2005) and ASCA (2004), counselors should not discriminate against or refuse a client services based on sexual orientation. Furthermore, cultural diversity issues have been incorporated into these ethical standards for the principle of justice (Hermann & Herlihy, 2006; Welfel, 2002). As challenging as it is to counsel individuals who hold values different from yourself, you as a professional counselor, must respect those differing values and not impose your values within the counseling process. Legally, the U.S. Supreme Court has indicated that it is unconstitutional to discriminate against lesbians, gays, or bisexuals. Under the Equal Protection Clause of the Fourteenth

Amendment, it is illegal for states to discriminate against an individual on the basis of sexual orientation even if citizens object to homosexuality due to personal or religious beliefs. Therefore, counselors who discriminate against an individual's sexual orientation cannot be justified through religious beliefs. In addition, counselors who partake in discrimination based on sexual orientation are taking a big risk of legal liability including grounds for a malpractice lawsuit (Hermann & Herlihy). Correct Response: A

14. Counselors have profound legal and ethical responsibilities when it comes to students who are self-mutilators. Once the client has revealed the painful act of self-mutilation, ethically, it is extremely important for counselors not to breach confidentiality because this could cause further harm to the student; however, counselors are legally required to report disclosures to the appropriate authorities if they become aware that the student may cause harm to themselves or others (Froeschle & Moyer, 2004). Counselors should discuss and clarify confidentiality limitations with students before counseling begins to help ensure that students understand the limits of confidentiality within the counseling process (Froeschle & Moyer). Correct Response: C

15. While counselors are legally expected to care for students and protect them from foreseeable harm, they are also ethically inclined to protect the legal rights of students. When preventing school violence, counselors may use student profiles to distinguish which students may need to be in violence prevention or intervention programs. When using student profiles to place them into different prevention or intervention programs, alternative education programs, or group

counseling opportunities, many constitutional laws could be violated (Bailey; Hermann & Finn). Student profiling occurs when a counselor seeks out a particular type of student to fit into a particular program or intervention being offered. For example, a counselor may not implement a violence intervention program at the beginning of the year and choose students within the school who have previously committed violent acts before coming into that school (Bailey; Hermann & Finn). Picking a student because of a similarity to a specific profile can be seen as withholding the right to an equal educational opportunity which in turn would cause questionable violations to the constitution. To avoid violations of a student's constitutional rights, counselors should implement prevention, intervention, or counseling programs for the whole school and then decide which students should be further helped or assisted with a particular problem once the student has demonstrated the problem behavior in the current school year (Bailey; Hermann & Finn). Correct Response: C

16. Because the majority of students with whom school counselors work are minors, we have an added burden of balancing the child's right to a confidential relationship with the parent's right to know. In this instance, Ms. Simmons has a right to know what was discussed between you and Mary. While you may want to describe the nature of the session in very general terms, ultimately Ms. Simmons has a right to know what transpired (Glossoff & Pate, 2002). Correct Response: A.

## Scoring

Use the scale below to determine your suggested level of “legal literacy”:

<b>Number Correct</b>	<b>Classification</b>	<b>Commentary</b>
14-16 items	A counselor’s counselor	Your knowledge of your legal rights and responsibilities is excellent. Congratulations!
10-13 items	On the right track	Good, but not great. A bit more review might be good.
5-9 items	So-so!	Not good, but not bad, either. You can do better and you better! A little more reading may make you more confident (and competent).
0-4 items	Get a lawyer...fast!	Your knowledge of Federal Law as it applies to counselor related issues need some attention....a lot of attention!

## Discussion

This survey provides a variety of questions regarding the most prevalent legal issues that school counselors may face. These questions were intended to bring forth specific legal issues within the educational system that school counselors may not be aware of or have the knowledge or skills to handle appropriately. Because legal concerns within the school system are on the rise, these questions may help counselor educators, professional school counselors, and graduate students assess their knowledge and competency of legal issues regarding students in the school setting. Not only can counselor educators determine the level of ethical and legal knowledge of their

students through this survey, but graduate students and professional school counselors can also assess their perception of preparedness to respond appropriately to legal issues which may arise within the school setting.

To become well-informed on the many and ever changing legal and ethical issues surrounding education and counseling practices, school counselors must seek educational opportunities. Multiple opportunities are always available to learn about ethical or legal issues through workshops, continuing education programs, and counseling organization affiliations. A study conducted by Hermann (2002) indicated that school counselors who continuously participated in continuing education programs that dealt with ethical and legal issues in counseling, felt more competent in responding to legal and ethical dilemmas frequently encountered within the school than did their colleagues who did not participate in these programs regularly. Because laws relevant to education are consistently changing and evolving, school counselors should continue to pursue continuing education related to legal issues (Hermann, 2002). Because school counselors are often legally vulnerable, being attentive of legal issues within the school community and acquiring the knowledge to address these issues will assist counselors in providing proper services for students and reduce the risk of pointless litigation (Hermann).

In addition to staying abreast of specific school rules and policies, school counselors should have a basic understanding of state and federal laws affecting their work. Counselors should also be familiar with relevant State Department of Education regulations, local school board policies, and the ethical standards of the American School Counselor Association and the American Counseling Association. For specific

legal questions, counselors are advised to consult with their schools' legal counsel.

Counselors owe it to themselves and to their counselees and their families to be knowledgeable regarding applicable laws and regulations. To do otherwise, is to invite legal difficulties.

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