

**CENTER FOR SCHOOL MENTAL HEALTH ASSISTANCE
UNIVERSITY OF MARYLAND SCHOOL OF MEDICINE**

Meeting Summary

Critical Issues Planning Session

***LEGAL AND ETHICAL ISSUES IN THE PRACTICE OF SCHOOL MENTAL
HEALTH***

August 10, 1998
Baltimore, Maryland

INTRODUCTION

On Monday, August 10, 1998, the Center for School Mental Health Assistance sponsored a Critical Issues Planning Session on the topic of Legal and Ethical Issues in the Practice of School Mental Health. Participants in this Critical Issues Meeting brought a wide variety of expertise from an array of perspectives. The group included representatives from American School Health Association (ASHA), The US Department of Health & Human Services, school mental health clinicians, and advocates who are vested in child mental health. Several parents were also invited but were not able to attend. Participants who attended this meeting were Abigail English, JD, (via conference call), Director of the Adolescent Health Care Project; Lois Flaherty, child and adolescent psychiatrist who serves as Chair of the Advisory Board of the Center for School Mental Health Assistance; Lani S.M. Wheeler, M.D., FAAP, FASHA, a Pediatric and School Health Consultant at Anne Arundel County Department of Health; Kate Fothergill, MPH, Director of Comprehensive Health Care Programs at Advocates for Youth; Nadine Schwab, RN, PNP, MPH, Consultant for School Health Services for the Connecticut Department of Education since 1989; Bernice Rosenthal, MPH, Administrator for School and Adolescent Health Services for the Baltimore City Health Department; DeAnn Lechtenberger, Ph.D. Senior Education Advisor for the National Resource Network for Child and Family Mental Health Services at the Washington Business Group on Health in Washington, DC; Sandra N. Howard, a Senior Health Policy Analyst in the Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services; Kathi Grasso, the Director of the Child and Adolescent Health Law Program of the American Bar Association Center on Children and the Law; Frederika F. Granger, LCSW-C, program manager for Linkages to Learning; Louise Fink, M. Ed., Director of Special Populations for the Baltimore City Public School System (BCPSS); Carol Kaufman, LCSW-C, Educational Specialist in the Special Pupil Services Division of the BCPSS; Wanda Moore, LCSW, Associate Director of UMABs School Mental Health Program; Marcia Glass-Siegel, LCSW-C, Coordinator of School-Based Mental Health Services for Baltimore Mental Health Systems; Robyn Waxman, Ph.D., consultant with the CSMHA; Olga Acosta, Ph.D. Program Coordinator for the CSMHA; Mark D. Weist, Ph.D., Director of CSMHA. The goal of the meeting was to outline the unique liability issues related to providing mental health services in the schools and to discuss the

development of appropriate guidelines for the ethical and legal operation of school-based and school-linked mental health programs.

Overview of Topics Covered:

Participants in the meeting had reviewed The ASHA document entitled Guidelines for Protecting Confidential Student Health Information. This document reviewed conflicts related to confidentiality and privacy of student records collected in school-based health programs. The meeting began with feedback on the document and discussion of issues raised by it. We then discussed topics including:

Guidelines for Protecting Confidential Student Health Information:

The meeting opened with a discussion the ASHA document on protecting student confidentiality. Participants agreed that it is a valuable document that helps raise awareness of conflicts related to confidentiality regarding the privacy of student records collected in school health programs. A number of policies have been developed to help delineate students' health records from their general school records. However, it was pointed out that there seem to be key differences between School-Based Health Centers (SBHCs) and school-based or school-linked mental health programs. For example, while SBHCs often have clear policies indicating that their records are not a part of the school's records, other types of school mental health programs not connected to SBHCs may experience more ambiguity regarding the status of records.

The ASHA document underscored the difficulty of keeping personal notes confidential because the moment you share information with other professionals in the school (e.g., school counselor) it also becomes part of their notes and loses its protected status. This makes the issue of collaboration among different members of the school team much more complex. A related question that arose was whether parents had a right to the information (as they would if it were part of their children's school record). While participants were concerned about protecting students confidentiality, they also pointed out the danger of excluding parents from the loop and cautioned against supporting policies that do so as a general rule. Participants agreed that clinicians might need to re-think issues related to confidentiality and to question whether we have a knee-jerk refusal to share information. Flatly refusing to share information 1) serves as a barrier and 2) undermines the goals of having mental health services provided in the schools. One suggestion was that clinicians provide behavioral observations based on their work (rather than private information shared within a therapy context) and concrete recommendations based on these observations that the teacher can use to help the student improve their academic achievement. Another suggestion was that there be a continuum of accessibility to records depending on level of risk the student poses. For example, a clinician may find it critical to share information (e.g., with parents, a school administrator) in the case of a potentially suicidal student but may be less willing to share information for students who are not presenting a condition of risk.

Suggestions on ways to address these concerns included becoming more sensitive to the fact that school principals are also concerned about student safety and liability. Members agreed that often the information principals (or teachers) want, does not necessarily have to violate confidentiality. A dialogue between the principal and mental health clinician should attempt to clarify expectations and how each sees the clinician's role in the school. Ongoing staff development and education around these issues will also help minimize the differences in staffs perceptions about the ways that school-based mental health staff can be best utilized. For our part, staff from school-based programs must remain aware that we are guests in the school and it is important that we become familiar with the particular culture of each school. Insensitivity toward cultural issues can undermine the ability to work effectively in the school. One idea suggested was to seek a mentor within the school (e.g., experienced teacher) who can provide some guidance in this area.

The group also discussed issues related to giving students psychiatric diagnoses given, that 1) they are often erroneous 2) they can be stigmatizing 3) they can come back to haunt students later as when they go to apply for health insurance or military service. In spite of these concerns, diagnoses are commonly needed for reimbursement of child mental health services. This creates a dilemma for clinicians. Participants at the meeting recognized that current models of mental health funding are biased toward high-end students (i.e. with more disturbances). Unfortunately, funding for prevention remains very limited. An analogy was made between giving vaccines as a preventive service without needing to document that the student is sick. A similar concept needs to be developed in mental health. Unfortunately, until issues of funding are separated from diagnostics, students will be at risk of having damaging or discriminating information floating around. Again, participants cautioned against blanket statements discouraging diagnoses. They agreed that there are instances when it is beneficial to provide an accurate diagnosis for a student (such as in cases where medication would benefit the student).

One issue that raised particular concern and a number of different opinions among participants was the difficulty balancing confidentiality, responsibility and liability when you have knowledge that a student is doing something illegal or that violates school policy (e.g., using or distributing illicit substances or involvement in violent activity). Have we gone too far in protecting students' rights?

- Are we giving students a mixed message if we are aware of illegal or prohibited activity and don't report it? Therapists often assume that they do not have a choice regarding protecting confidentiality. Is this an accurate assumption? If we consider the issue as parents as well as counselors, does this change our views?
- Does our responsibility depend upon how we obtain the information (e.g., whether we observe it or whether a student reports it)?
- Should the outcome of our action shape our decision about how to handle the situation? For example, if reporting the activity results in having the student expelled, is that the most beneficial in the long run?

In general, there was agreement among participants that the overriding goal is to change the problem behavior (e.g. drug use). Participants differed in the ways that they would attempt to reach this goal. For example, a clinician might establish a contract with the student that provides limited confidentiality. Confidentiality would depend on the student making agreed upon behavioral changes. A clinician might also establish an agreement with the principal that addresses how these situations will be handled. For example, one policy might be that in drug-related cases, the parents will be called and the students enrolled in a mandatory drug counseling program; however, they will not be turned over to the police. However, this policy, as reasonable as it seems, may be difficult for some clinicians to accept, given the frequency of problem and risky behavior.

Issues of Consent and Parental Involvement:

The group discussed a number of issues related to parental consent and involvement as well as the need to ensure that parents are properly educated with regard to their rights (e.g., marijuana use, drug dealing by youth).

Relevant Questions:

- Are parents being pressured to give to consent when they aren't properly educated?
- Are parents aware of appropriate "standards of mental health care?"
- Are parents aware of what information mental health care providers can share with school personnel?
- Do parents know whether Mental Health services are being provided by the school or by a separate entity?

Specific questions arose with regard to situations in which the parent is not the legal guardian, (e.g., for children in the custody of Social Services). When the guardians are not the parents, are they less likely to truly question or understand the consequences of the decisions they make on behalf of the students? Alternatively, there are many situations where it is difficult to determine the legal guardian (e.g., child residing with grandparent while a parent is incarcerated).

Generally, standards do not exist to address the range of situations that arise. Just a sampling of such situations include:

- Who can give consent when the child is residing with a relative because the parent is incarcerated?
- When seeking parental permission for services, how do we establish who the guardian is?

- What type of documentation is required? For example, when is verbal consent acceptable?
- What is appropriate in cases of older adolescents, when parental consent is not necessarily required?

A particularly difficult issue for clinicians, has been working with youth from homes where there is reported abuse, neglect, and/or parental substance abuse, but not at a threshold where Social Services will take action. What do you do with a child in a situation like this who desperately needs mental health intervention but the clinician cannot obtain parental consent? Many programs will provide services to the child based on the view that this would be justifiable in front of a licensure board or group of professional colleagues. How are decisions to seek consent impacted if insurance is being billed (Medicare)? Typically, forms are routinely sent home to parents. Therefore, even if consent is not legally necessary, billing may necessitate it. Commonly, it is best to involve the parents so the therapist might make one of the treatment goals to gain the student's support to do so.

Establishing Public Policy:

A general consensus among the participants at this meeting, was that this is a crucial time for developing legislative policy and structuring funding mechanisms for children's mental health services. Nationwide there is an increased focus on providing prevention services (e.g., what's that new program that gives extra funding to little kids?). However, it is also clear that even if these prevention services were available, their impact would be limited by the difficulty these high risk students typically have accessing services through traditional health care centers. The fact that the nation is poised and ready for a discussion of each of these issues at the same time provides a rare opportunity for those involved in school-linked and school-based mental health services. It is important to educate the public and policy makers about the potential to impact huge numbers of our at-risk youth by providing preventive services through SBMHC's. However, our presentation must make clear the need to changes in current funding processes if this type of plan is to be effective. Participants at this meeting initiated talk of starting a task force to determine the best way to proceed. The group agreed that an initial goal must be to develop a comprehensive set of guidelines for the ethical and legal operation of school-based and school-linked mental health programs. Once a comprehensive plan has been developed, there are many organizations that might serve as allies, such as the American Bar Association; however they cannot lobby with us until such a plan has been formulated.

Summary Discussion and Recommendations:

This Critical Issues Planning Session on the topic of Legal and Ethical Issues in the Practice of School Mental Health illuminated a number of unique situations that come into play when providing school-based or school-linked mental health services. The goal

of the meeting was to outline the unique liability and ethical issues related to providing mental health services in the schools and to discuss the development of appropriate guidelines for the ethical and legal operation of school-based and school-linked mental health programs. Given the range of topics and the potential impact that our decisions have, participants agreed that the considerations are complex and multi-layered.

Conclusions:

1. School mental health programs should provide an ongoing forum for discussion and education with members of the school and surrounding community on the legal and ethical issues involved.
2. School mental health should be trained on ways to share information with school personnel in a practical way that does not necessarily violate students' confidence. For example, clinicians could provide information that empowers the teachers to work in a way that helps the student achieve his/her academic potential. This does not mean that the clinician needs to share specific information. It does mean that clinicians may need to re-think their definition of "confidentiality." Maintaining confidentiality might not mean say nothing.
3. Another suggestion was that an Ethics Committee comprised of both school personnel and community representatives be established within the school to address ethical issues that may arise. It may also be useful to explore guidelines developed by other groups, such as postal workers. Many of these groups have already done research on handling ethical and legal issues with employees and people serviced by them. Participants also discussed the importance of having access to legal counsel. However, members cautioned that there is a need to find attorneys who are knowledgeable in the area of school mental health. There was concern that frequently lawyers do not have expertise in this specific area and that ill-equipped legal counsel can be very dangerous. There was consensus among the group members to work toward meaningful and ongoing collaboration with the school, youth, parents, and with the community.

Next Steps:

- We will provide feedback to ASHA on "Guidelines for Protecting Confidential Student Health Information" based on our discussion.
- We will develop guidelines for legal and ethical issues of mental health care in the schools. Kathi Grasso agreed to serve as a legal consultant as guidelines are formulated.
- Olga Acosta asked participants to forward ideas, background information and information on relevant issues to the CSMHA.

The group agreed that many important topics were not addressed, which pointed to the need for ongoing dialogue on the critically important topic of unique legal and ethical issues in school mental health.

