

ETHICAL AND LEGAL PROCEDURES REGARDING THE, COLLECTION,
MAINTENANCE, AND DISSEMINATION OF, INFORMATION FROM STUDENT RECORD

by

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CHAPTER I

INTRODUCTION

The decade of the seventies is a new era regarding personal information collected, maintained, used and disseminated by psychologists, counselors, social workers, and others at the elementary, secondary, and college levels. For a long time, there seemed to be no doubt in anybody's opinion that the professional worker gave his tests, conducted his interviews, wrote his reports, and shared this information with colleagues as he felt appropriate; however the information was rarely shared with parents or the children themselves.

A new perspective has been developing during the last few years, and is in fact--still gaining strength. That is, school counselors, psychologists, and possibly other pupil personnel workers, have been seeking through state legislatures to obtain for themselves privileged communications. They have been asking legislatures to declare that pupil personnel workers should not be required to divulge to anyone what they learn from children--not even to parents!

Some psychologists see as a threat to themselves the changes during recent years in which courts and state education departments have ruled that parents are entitled to know what is in school records and what is being done

to their children by psychologists, counselors, and others.

Deficiencies in information collection and record-keeping procedures, taken together, constitute a serious threat to individual privacy in the United States. These deficiencies also interfere with the effective functioning of educational institutions. School administrators, if they are to continue to obtain information necessary for the effective performance of their duties, must maintain the good will of their clients who voluntarily supply such information. School authorities should review their current recordkeeping policies in light of guidelines and revise them in such a way as to strike a balance between the need for educationally relevant information and the protection of individual rights to privacy.

THE PROBLEM

Statement of the Problem

The purpose of this study was to collect information which would assist teachers, counselors, administrators, and parents to meet the challenge of providing the ethical and legal management of information from student records. With all the demands on society, there is a need for some guidelines which teachers, counselors, psychologists, administrators, social workers, and parents may use in identifying and solving problems concerning the collection, maintenance, and dissemination of information.

The following questions were used to guide the study:

1. Should the schools and school personnel be required to obtain parental and/or pupil permission before collecting certain kinds of information about pupils or their families?
2. Should the school be required to obtain parental and/or pupil permission before releasing certain information about pupils to parties outside the school?
3. Should school personnel, especially counselors, be protected legally from subpoena, by a third

party, of information collected in the course of a professional relationship with a client?

4. What rights should pupils and/or their parents have regarding access to information about the pupil possessed by the school?
5. What rights, do pupils, have with respect to information about them?

Definition of Terms

Administrators. An individual in an organization who has responsibility for organizing and carrying out organizational policies and purposes.¹

Attitudes. The ideas, opinions, beliefs, and values which a person acquires through experience and which are dynamically organized by the individual field of forces operated at any given moment.²

Counselor. A person whose major task (usually through confidential interviews with individual counselees or a small group of counselees) is to help students make

¹William E. Hopke, Dictionary of Personnel and Guidance Terms (Chicago: J. G. Ferguson Publishing Company, 1968), p. 9.

²Ibid., p. 35.

choices which lead to solutions of their educational, vocational, social, and personal problems.³

Ethical. Having to do with the standards of right or wrong or in accordance with formal and professional rules.

Legal. That which is valid or recognized by law or in accordance with the law.

Student records. Various information about a person which is in writing to be kept for future use.

Procedure and Design

This study involved a review of recent literature which dealt with the ethical and legal procedures for collecting, maintenance, disseminating, or using information from student records. This literature was identified by using such references of directions from the card catalog and education indexes at Grambling College, Louisiana Polytechnic University, and Kansas State University.

³Hopke, p. 92.

CHAPTER II

REVIEWS OF RELATED LITERATURE

As a member of the American Personnel and Guidance Association, a counselor working with a student, is bound by the statement of Ethical Standards. Two of the APGA principles are especially applicable to the matter of confidentiality:⁴

1. The counseling relationship and information resulting therefrom must be kept confidential and consistent with the obligations of the member as a professional person.
2. Records of the counseling relationship including interview notes, test data, correspondence, tape recordings, and other documents are to be considered professional information for use in counseling, research, and teaching of counselors but always with full protection of the identity of the client and with precaution so that no harm will come to him.

⁴Elizabeth T. Burianek, "Confidentiality of Student Records: A Counselor's Point of View," National Education Association, LV (January, 1966), p. 28.

Collection of Information

During the recent past much attention has been focused on the confidentiality of student records and the counseling process. Today, records, including those derived from counseling, are being created, maintained, and used with increasing caution. In order for both counseling relationships and various student records to be of more benefit and at the same time protect students, professionals are striving to work in terms of their own state statutes and local work regulations while clearly forewarning their students or clients of any prevailing limitations.

Fitzgibbon has stated that school authorities urge that no information should be collected from students without the prior informed consent of the child and his parents. Such consent may be given either individually or through the parents' legally elected or appointed representatives depending on the nature of the information to be collected.⁵ However Nolte has indicated that some

⁵Thomas J. Fitzgibbon, "The Ethical and Legal Position of the Counseling in Divulging Information," Measurement and Evaluation in Guidance, I (Spring, 1968), p. 76.

states require public schools to collect information by statute while others do not.⁶

Heayn and Jacobs have asserted that by statute, resolution, and policy there is the necessity for the legality of student records. Since the cumulative folder is a document of human activity more than an academic record, it should not be either released wholesale or totally locked away.⁷

In 1970 the Russell Sage Foundation stated that conditions under which representational as opposed to individual consent should be required. First it is not always possible to obtain the separate consent of every parent for every information gathering process and second, the approval of such processes by appropriately elected representatives will in some institutions adequately satisfy the principle of consent.⁸ The Foundation beleived it would be appropriate to endorse a formulae for the individual to identification of situations in which representational consent would be sufficient. It is

⁶M. C. Nolte, "Are Student Records Public?" American School Board Journal, ML (Spring, 1966), p. 57.

⁷M. H. Heayn and H. L. Jacobs, "Safe-guarding Student Records," Personnel and Guidance Journal, XLIX (September, 1970), p. 18.

⁸"Collection of Information," Guidelines for the Collection, Maintenance, and Dissemination of Pupil Records (New York: Russell Sage Foundation, 1970), p. 16.

enough for present purposes to emphasize two contrasting benchmarks:

It was concluded that representational consent would be sufficient in situations involving aptitude and achievement testing and reporting of skill and knowledge outcomes in the subject-matter areas now within the customary curricula of the public schools.⁹

Programs of personality testing and assessment should proceed only with the informed individual consent of each child and/or his parents. The test or assessment itself should not be shown to the child or his parents. Moreover, individual consent should be an absolute requirement before information, concerning a pupil's family is obtained or before any information not directly relevant for educational purposes is solicited from the pupil or his parents.¹⁰

Classification of information--gathering procedures falling somewhere between these two extremes; for example, habit/skills tests or vocational interest inventories, should be undertaken by each school system, with parents being notified of the results of all such decisions.¹¹

In all situations where individual consent is to be obtained, it should be in writing. The student consent should also be obtained where he is reasonably competent to understand the nature and consequences of his decision.¹²

⁹"Collection of Information," p. 16.

¹⁰Ibid., p. 16-17

¹¹Ibid., p. 17.

¹²Martha L. Ware, "Inspection and Release of Student Records," Law of Guidance and Counseling (Cincinnati: The W. H. Anderson Company, 1964), p. 29.

In situations where representational consent is sufficient, Golsin stated that there is a necessity for school officials to inform students and parents in advance, perhaps annually or biannually, of the the purposes and character of the information collected.¹³ Moreover, it is important to reasonable opportunities for the representational agency to contest the necessity or desirability of particular information collected processes.

Certain special problems are presented by information gathering in individual situations.¹⁴ Illustrative, are interviews or diagnostic tests by the school counselor, social workers, psychologists, and school principal. In some cases, the requirement for informed consent cannot be met, perhaps because of the age of the student, or the unforeseeable course of the interview process. Moreover, in many schools there is an element of duress in that the student feels obliged to participate in the situation.

Caruso suggested that in cases where information is collected for non-school purposes, either by school

¹³Golsin, p. 150.

¹⁴"Proposed Principles For the Management of School Records: Excerpts," The Personnel and Guidance Journal, 1 (December, 1971), p. 22.

personnel or outsiders, consent must be obtained from the responsible school authorities.¹⁵

Caruso clarified that even when information is collected under anonymity, the collecting agency need the proper consent. Timely notification to students and their parents on information collection and careful reviews of the instruments and procedures to be used must be set up by school authorities.¹⁶

Maintenance of Information

The basic problem involved in the maintenance of student records is the fact that improper release of their contents may result in personal liability for defamation of the student or the invasion of his civil rights. Defamation is the invasion of a person's interest in his reputation and good name by communication to others which tends to lower a person in the estimate of the community by holding him up to ridicule, disgrace, contempt, hatred or contumely.¹⁷ Defamation contains an element of personal disgrace. Oversights as sloppy recording of information

¹⁵L. R. Caruso, "Legal Aspects of Privacy and Confidentiality of Students Files and Records," The College Counsel, IV (May, 1969), p. 32.

¹⁶Ibid., p. 33.

¹⁷Ware, p. 10.

and careless release of information are frequently getting school boards and school personnel in legal trouble. Essentially, the issues involve respect for the privacy of the individual versus the pupils' need to know matters of record.

According to the Russell Sage Foundation, the total set of student personnel information extent in a school at a given time ranges from tentative, uncorroborated reports on alleged student behavior to highly stable information. The various kinds of information requires various arrangement for security and access.¹⁸

"Student records are becoming more numerous and complex," wrote Killian.¹⁹ Records are being kept that involve personal facts, family information, scholarships, test scores, attendance, health, behavior, employment, and miscellaneous matters. These records should be maintained in perpetuity.

Goldman indicated that teachers, administrators, and counselors, have occasionally made unfavorable statements about students in reports of conducts, reasons for

¹⁸Heayn and Jacobs, p. 20.

¹⁹John D. Killian, "The Law, the Counselor, and Student Records," The Personnel and Guidance Journal, XLIX (February, 1970), p. 423.

school dismissal, and in replies to requests for recommendations from other schools or employers. This leads to litigation involving the tort of defamation, sometime called the "unwary trap" for school personnel.²⁰

A. T. Buckle asserted that information given directly to the counselor by the client should be revealed to another professional colleague only with the knowledge and approval of the client.²¹

According to Pardue, Whichard, and Johnson, the counselor's personal integrity is of the utmost importance.²² In addition to this, freely informing and forewarning clients of limitations should be applicable. Pardue, Whichard, and Johnson maintain that records should be maintained most cautiously and doubly careful in following state policies when releasing appropriately requested information.²³ The

²⁰L. Goldman, "Privacy and Cumulative Records," The Personnel and Guidance Journal, XLIX (June, 1969), p. 605.

²¹Heayn and Jacobs, p. 19.

²²Jerry Pardue, W. Whichard, and E. Johnson, "Limiting Confidential Information in Counseling," The Personnel and Guidance Journal, XLIX (September, 1970), p. 19.

²³Ibid., p. 20.

counselor's integrity dictates that when the client reveals to him a clear and imminent danger to the client himself or to others, the counselor is expected to report to the proper authority and/or take other emergency measures demanded by the situation without revealing his client's identity.

The Russell Sage Foundation stated that potentially useful information, but not yet verified or clearly needed beyond the immediate present, should be reviewed at least once a year and destroyed as soon as its usefulness has ended.²⁴ The Foundation also indicated that if, for any reason, temporary unevaluated information are held for more than a year, the existence of this information must be discussed with the parents and the reason or reasons for their maintenance explained. Parents then should have an opportunity to challenge the decision to maintain such information.²⁵

Dissemination of Information

All information regarding pupils and their families should be collected and maintained under safeguards of

²⁴Russell Sage Foundation, p. 21.

²⁵Ibid., p. 22.

privacy by informed consent, verification of accuracy, limited access, selective discard, and appropriate use. As long as the information is retained within the school, it can implement these principles with some flexibility of procedures. The school, however, is often asked to transfer student information to other agencies, institutions, and even individuals. Requests of this nature, come from schools, colleges, employers, courts, police, social, and sundry agencies. Conveyance of records removes the control of information from the school, more rigid precautions are required to protect the rights of the student against infringement of privacy, misinterpretation and inappropriate use of information.

The Russell Sage Foundation asserted that the school may, without consent of parents or students, release a student's permanent record file to other school officials, including teachers within the district who have a legitimate educational interest.²⁶ If the pupil is important, there is little reason to withhold information from the new school system.

²⁶Russell Sage Foundation, p. 25.

The state superintendent and his officers or subordinates, so long as the intended use of the data is consistent with the superintendent statutory powers.²⁷

To officials of other primary or secondary school systems in which the student intends to enroll, under the condition that student's parents be notified of the transfer.²⁸

Goslin and Bordier made the following recommendation of a report:

Parents should have full access to, and the right, the accuracy of, data of their children, and no persons other than specified school officials and parents should have access to pupil information without either subpoena power or parental and pupil permission.²⁹

Gunnings, attempted to discover how practicing counselors handle the disposition of personal information.³⁰ The information indicated that the counselors granted access to most information to teachers, other counselors, and administrators. However, registered disagreement was

²⁷Russell Sage Foundation, p. 25.

²⁸Ibid., p. 26.

²⁹David Goslin and Nancy Bordier, "Record Keeping in Elementary and Secondary School," On Record: Files and Dossiers in American Life (New York: Russell Sage Foundation, 1970), p. 56.

³⁰Thomas S. Gunnings, "Counselors and Confidentiality," The School Counselor, XIX (January, 1971), pp. 153-155.

found among the teachers' right of access to personal or psychological problems, and withholding of Intelligent Quotient scores from parents.

Lewis and Warman seem to be the only researchers who have addressed themselves to the question what personal information students expect to have released to other persons. They found a number of differences among non-counseled students, counselees with vocational problems, and counselees with problems of a more emotional or clinical nature. These findings suggested that vocational counselees were more willing to release information, while the personal-emotional counselees were least willing. The non-counseled group fell between the other two groups. The results also indicated that the identity of the person to whom information was to be released was an important consideration of the students.³¹

The Russell Sage Foundation again stated that the school or any school personnel may not divulge, in any form, to any persons other than the school officials, any information contained in school records except with written consent from the students' parents. This consent must specify

³¹Wayne Anerson and Steve Sherr, "Confidentiality Expectations of College Students: Revised," The Journal of College Student Personnel, XXXIX (July, 1969), p. 265.

records to be released and be in compliance with judicial order, or orders of administrative agencies which have power of subpoena.³²

The school may comply with parental requests for release of information to other persons or agencies until the student reaches the age of eighteen and no longer is attending high school or is married.³³

The school may also provide anonymous information from its records for outside research purposes without consent under conditions where the likelihood of identifying any individual because of his unique characteristics is negligible.³⁴

School districts often face instances in which governmental agencies mandate the release of information on individuals. The principle of informed consent should apply in all cases except those involving child abuse or neglect statutes. It is recommended that governmental

³²Vivien S. Teitelbaum and David Goslin, "The Russell Sage Guidelines: Reactions from the Field," The Personnel and Guidance Journal, L (December, 1971), p. 312.

³³Ibid., p. 313.

³⁴Ibid., p. 314.

agencies in mandating the provision of information abide by the law contained to assure the rights of privacy.

Counselors must of course consult pupil records regularly in order to assist students in planning their academic programs. Information from a recent study of the social effects of standardized testing³⁵ indicate that elementary school teachers often receive their pupils test scores routinely at the beginning of the school year. Other teachers report that they consult pupil records occasionally in order to obtain test scores and other information about pupils.

Pupil records are a resource to which school personnel turn when difficulties arise or when administrative procedures require a decision based on past performance, measures of intellectual capacity or some other information about pupils. It can be said that a great deal more information about students is collected and maintained in their permanent record files than is ever issued by their teachers or counselors.

³⁵David Goslin, Teachers and Testing, (New York: Russell Sage Foundation, 1967), p. 49.

CHAPTER III

DISCUSSION, CONCLUSION AND GUIDELINES

Many parents are not satisfied with what schools have been doing to their children because of many changes taking place. At first, it was the right wing movement who was opposed to Freud, projective tests, and the mental health movement. Then blacks and other minority parents felt that schools were creating self-fulfilling prophecies which kept their children from achieving and they blame everybody in the school, including counselors and psychologists, who obviously had control over the assessment of learning ability.

Now parents have joined the liberals, in their concern about information banks and technological snooping devices. Finally, schools brought a lot of criticism upon themselves because they lacked clear policies regarding release of information to the police, FBI, credit agencies, newspaper reporters, colleges, employers, and others. In fact, within any single school system, different ways, mostly on an ad hoc basis.

There has been a lot of bad and sloppy practice and it is time for a change. What follows is an effort to describe some of the main dimensions of problems with emphasis on the factors which have been a source of confusion and dissention between school personnel on one

hand and civil liberties groups, courts, parents, and general public on the other hand.

First, there is the question as to the mandate which the public gives to schools. In the eyes of the public and their elected representatives the prevailing expectation is that the schools are to provide for cognitive education. In addition, some people are ready for the schools to do something in the area of attitudes and values, but mostly to inculcate traditional attitudes and values. A smaller number of people appear ready for schools to enter into the area of psychological education, that is, teaching how people behave in general. But the pupil personnel specialists have too often assumed that they think may have some relation to the child's learning and development where neither the child nor the parents knows what is being revealed. For many the ground rules are clear: the psychologist's or counselor's diagnostic limits are to assess the extent to which a child is learning and perhaps at most to use non-depth measures of so-called general mental ability or specific learning abilities. Beyond this one should not go without specific parental permission and concurrence.

Second, an assumption that seems to prevail that because some schools are public their records are public. Therefore, it is reasoned, these records may be revealed

by school officials to outsiders, especially to other public agencies such as, welfare, police, employers, etc. In fact, the opposite seems more logical: that because the school has the awesome power of government behind it, and because children are a captive audience, one should, if anything, bend over backwards to avoid taking advantage of the situation and forcing children and parents to reveal things that they would rather not if given a choice. Every possible means should be taken to protect the information received from everybody except the pupil, his parents, and the people most immediately concerned.

The third factor is the assumption that the school's staff knows better than parents what is good for their children. It is partly because of this assumption that counselors and psychologists feel, that they have the privilege of giving children and adolescents a confidential counseling relationship. A relationship that is so confidential that even the parents may not know about it. Many pupil personnel workers feel that when they talk to children about drugs, pregnancy, and delinquency problems that students would react negatively if they revealed this information to others. In situations of this nature, should the counselor continue to work with the children without revealing anything to the parents? There are several factors involved but the one at issue is the

attitudes of pupil personnel workers based in part on the assumption that they know better than the parents what is good for the children. Pupil personnel workers sometimes think the parents are ignorant, disturbed, negligent, or hostile and feel that certainly in these cases they can and should supercede the usual parental prerogatives.

This is a dangerous direction to take. Legally and morally parents are responsible for their children and no professional person, and certainly not one who is on the staff of a public institution such as a school, has any business placing himself in loco parentis. After all, it is the parents who have to live with the outcome and will be responsible for what happens thereafter, not the pupil personnel workers. It is the school's responsibility to involve the parents in working with their children, and to try to get parents to understand and accept the validity of the schools' assessments of problems and their recommendations. In cases where society thinks the child's well-being is seriously threatened one can seek assistance from the Children Aid or the juvenile courts.

Schools typically maintain extensive and intimate information about pupils and their families for legislative educational purposes including instructions, guidance, and research. The collection and maintenance of any

information about a pupil or his family constitutes a potential intrusion on privacy. At the same time society by its approval of our educational institutions legitimizes such intrusions at least in those cases where the information collected can be demonstrated to be necessary for the effective performance of designated educational functions.

There are clear indications, however, that current practices of school personnel relating to the collection, maintenance, use, and dissemination of information about pupils threaten a desirable balance between the individual's right to privacy and the school's stated need to know. For example, where should the records about students be located and what are the purposes of the school records?

The records should be conveniently located close to the staff member most frequently using the records in counseling with the pupils. In the elementary school the records should usually be placed in the room of the grade teacher. In the high school they should be placed in the room or the office used by the counselor of that pupil. Records can be filed in a teacher's desk or in the filing cabinets. Where counselors move from room to room a small portable filing box is available with a lock.

Pupil personnel records and forms have been devised as a convenient and relatively objective basis for record-

ing individual student information. They are tools which contribute to a better understanding of pupils and their problems. They serve this function, only if they are used with care by teachers, counselors, and administrators. An extensive record system, elaborate in every detail, is an extravagance if no real use is made of it.

On the basis of the information compiled in this study, it was found that counselors, administrators, and psychologists, rejected the dissemination of information about student records and indicated that they have few counseling sessions with parents.

The information also indicated that counselors, administrators, and psychologists feel that information obtained from students should not be disseminated because counselors and others involved could get into serious trouble. Other counselors feel that student records should be coded in case there is a burglary or break-in.

The majority of the authorities consulted felt that information about students should be maintained and kept up to date. If, however, the information obtained through counseling sessions is never used, it should be destroyed after a few years.

Counselors and administrators must make decisions about what they do and the probable effects of these decisions on their students. Decisions about communicating

information, among others, must be made. Because of the wider existence of student personnel records and their more personal and psychological nature, these decisions present a complex problem. Counselors and administrators must, at the same time, serve the best interest of the individual student and the society of which they are members.

After completing the study, the following guidelines were made:

1. Counselors and administrator's purely private memoranda should be kept inaccessible to anyone except other counselors, administrators, and some teachers.
2. A counselor or administrator who had a confidential relationship with a student should not give advice concerning actions against such student.
3. Information a counselor has obtained through counseling should be surrendered if it is constitutionally subpoenaed.
4. Counselors should not refer only cases of serious, overt, and imminent dangers, but lack of knowledge about a case, is a good reason for referrals also.

5. Counselors should clarify the exact nature of their responsibility to the student.
6. A common core of guideline should be made of the counselor's working procedures with outside sources.
7. Professional authorities should interpret information to parents about their children in any situation.
8. Parents should not be denied access to information concerning their child as long as it is interpreted correctly.
9. A counselor should not release confidential information because other counselors have the same knowledge.

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Abstract

This study consisted of a survey of the literature designed to prepare teachers, counselors, administrators, psychologists, social workers, and parents for meeting the challenges of providing the ethical and legal management of information from student records.

An attempt was made in the review of literature to determine (1) whether or not school personnel should be required to obtain pupil and parental permission before collecting or releasing certain kinds of information; (2) identify whether or not it is best for school personnel, especially counselors, to be legally protected from subpoena by a third party; and (3) what rights parents should have in regard to access of information from student records.

Many researchers indicated that much attention has been focused on the confidentiality of student records; and today records are being collected, maintained, and used with increasing caution. Information collected, maintained, and disseminated from student records should have the permission from the child or his parents if the child is not eighteen years of age. The consent may be sought individually or through the parentals' legal representatives.

If information is maintained for more than one year, the parents and the child should be aware of such storage and the reason thereof. Dissemination of information is permissible

to other school officials of the same district who have legitimate educational interest. Parents should have the access to their children's records with the proper interpretation from responsible persons.