Legal & Ethical Issues for Counselors at College Campuses

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Today

• Review common legal and ethical issues counselors face on college campuses
• Best practice suggestions
• Resources

Common issues

• Mental health and higher education law
• Multiple roles on campus
• Privacy vs. confidentiality
• Other people’s understanding of your role
• Single provider on campus/ small staffing
Mental Health AND Higher Ed Law

- Working in two fields at the same time
- Ethical decision-making impact
- Liability issues for you and your campus
- Educating others accurately and appropriately
- Your role outside of providing direct care
  - Consultation
  - Teaching
  - Supervising
  - Advising

But like HOW MUCH law?

- HIPAA vs. FERPA
- Title IX
- ADA and accessibility law
- Minors = Ohio’s College Credit Plus
- HB 28

Laws impact campus policy

- Academic and housing accommodations
- Reporting expectations
- Privacy vs. confidentiality
- Separation of students from campus AND returning to campus
- BIT and CARE Teams

*** Campus policy does not trump our laws and ethics ***
HIPAA vs. FERPA

- **HIPAA**
  - Are you a covered entity?
  - Are ALL your roles covered entities?
  - Comes into play if billing
  - Use as a best practice model

- **FERPA**
  - Treatment records only when providing clinical care and must be separate from student records
  - Very similar to HIPAA
  - Can allow you access to academic and student-based information at the institution
  - FERPA waivers

**It might be both**

Title IX

- Licensed mental health clinicians are exempt from mandatory reporting expectations
- You should be highlighted as confidential resources on the campus during any trainings for faculty, staff or students

Considerations:
- Exempt only when in therapeutic relationship
- Report aggregate numbers report to appropriate office
- Community safety issues

ADA and Accessibility

- May become involved by completing documentation for students to have academic accommodations
- ADA law regarding separation from the campus/institution

Emotional Support Animals – ESA’s
- Should primarily be an issue for residence halls, but campus policies and Ohio law are not as specific or clear
- Reference the recent ACA guidance for animal-assisted therapy (AAT) competencies at www.counseling.org/knowledge-center/competencies
- Consider collaborating with your accessibility office so that it is clear what you can and cannot assist with
College Credit Plus

• Ohio law supporting access of college classes to middle school and high school students
• May or may not be taking classes at the campus
• Increased enrollment throughout the state
• Consider preparing with policies, appropriate referral resources

Multiple Roles on Campus

• We wear a lot of hats
  • Counselor
  • Consultant
  • Events and programs
  • Trainings
  • Risk assessment
  • Policy writer
  • Advise student groups
  • Committee work
  • BIT/CARE/TAT

Multiple Roles on Campus

• Staying on top of what laws and ethics are at play with each different role
• Diffusion, overlap and separation
• Educating others to help maintain boundaries and manage expectations
  • May have to educate frequently, especially due to faculty, staff and student turn-over
Privacy vs. Confidentiality

• One of the biggest areas needing attention, education and communication!

• Counselors (and pastoral counselors/clergy) are the only staff members on campus with rights to confidentiality.

• Privacy is most pertinent to FERPA and educational records and when students disclose sensitive information to faculty and staff

Privacy vs. Confidentiality

You

• Covered by legal confidentiality due to your license and associated laws/ethical guidelines

• Have confidential sessions, interactions and treatment records

They

• Are expected to keep academic/grade information confidential from those not associated with the institution

• Have private conversations about non-academic issues

• Have specific expectations of mandated reporting under Title IX as an employee

Privacy vs. Confidentiality

• To consider

  • Emphasizing sharing information for the well-being of a student
  • Reminding them what they are and are not expected to do — which can become a conversation of what they are and are not trained to do
  • VERY important to address in any trainings like QPR, identifying students in distress, appropriate referrals, etc.
  • “Sharing” vs. “Reporting” information to you
  • Confidentiality does not apply to you if you are not in your clinical role providing care
Single Provider/ Small Staffed Campuses

- Increased probability of multiple role issues
- Appropriate caseload management
- Isolated and without clinical supervision or consultation
- Can feel increased pressure to do it all

Single Provider/ Small Staffed Campuses

- Consider
  - Need for clear clinical and caseload boundaries
  - Strong referral network
  - Utilize other resources
  - Find a buddy!

Bonus: Interns & Grad Assistants

- Consider their possible dual roles as student and para-professional
- Added importance of teaching them higher education laws and ethics along with mental health laws and ethics
**Best Practice Suggestions**

- **Education**
  - Self AND Others
- **About**
  - Applicable laws and ethical standards
  - Policies
  - Consultation and referrals
  - Boundaries and limits
  - Privacy vs. confidentiality

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**Best Practice Suggestions**

- **Communication**
  - Students
    - Office contact and services information
    - Upcoming events
    - Gone frequently to enhance visibility of the office
    - Consider opportunities for students to see you outside of the office
  - Faculty/Staff
    - Review of services
    - Review of sharing concerns
    - Review of appropriate referrals
    - Identifying students in distress or at risk
    - Again, may want to consider doing each semester or every academic year
    - Seek out opportunities to have face-time with them

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**Best Practice Suggestions**

- **Promote appropriate boundaries**
  - Help them understand what they are and are not expected to do
  - Remind them of your own accessibility to assist
  - Assist through development of appropriate policies and procedures
  - Help them establish and maintain appropriate boundaries with students
    - Accessibility/contact
    - Referral information
    - Difficult conversations
    - Involving a mental health professional
Resources

- NACUA  www.nacua.org
- ACCA  www.collegecounseling.org
- General Counsel or university attorneys
- Licensure board and ORC
- County mental health board
- Campus policies
- Other campus offices!
- Clinicians at other campuses in your area

Questions & Discussion

Thank you!
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