

Capital Region BOCES
STUDENT CONFIDENTIALITY ISSUES
Prepared Spring, 2004

This fact sheet is intended to guide staff decision-making in regard to issues of student confidentiality. However, each individual situation is different and can be very complex. Please direct questions you may have to your Supervisor, who may also involve your Director.

What are some issues that may fall under the heading of being "confidential"?

Confidential issues include student pregnancy, emotional difficulties, sexual preference and substance abuse (including alcohol, illegal drugs or tobacco).

Are all staff governed by the same regulations when it comes to student confidentiality?

NO. There are two different categories of BOCES staff: 1) licensed people who have similar confidentiality privileges as do attorneys and doctors, and 2) general teaching and administrative staff.

Which positions fall into these two areas?

Licensed Staff: social workers, nurses, physicians, psychologists and psychiatrists
General Teaching Staff: faculty, administrators, school counselors

How are issues of confidentiality handled differently by these two types of staff?

Licensed staff are prohibited from disclosing confidential information that the student shares with them as well as information that other sources share with licensed professionals. The purpose of this restriction is to promote full disclosure of issues to the licensed professional on the part of the client. Although the laws applicable to unlicensed staff are of a different origin, the same principle applies, namely they may not disclose a pregnancy to a parent or district.

Are there exceptions to the rule that licensed staff may not disclose confidential information about a student?

YES. A licensed staff member may not disclose a communication attained in the course of his professional employment... EXCEPT

- 1) with the client's authorization, preferably given in writing.
- 2) if the client reveals the contemplation of a crime or a harmful act,
- 3) where the client is under the age of 16 and the information acquired indicates the client has been the victim or subject of a crime, the licensed professional may be required to testify fully in relation to any trial or proceeding in which the crime is being investigated. This is not a VOLUNTARY action on the part of the licensed staff member - it is a requirement of the position, and only when the individual has been subpoenaed to do so.
- 4) Where the client waives the privilege by bringing charges against the licensed professional - in which case the staff member may share confidential information in the course of defending themselves from those allegations.

Is there a BOCES-approved form that licensed professionals must use to obtain the client's authorization to share confidential information?

YES. The form is available at www.capregboces.org/StaffResources.

What should the course of action be if someone other than the child reveals confidential information about a student?

In this case, staff members should speak to the child directly about the situation without revealing their source.

In the case where a child reveals that they are pregnant, may the nurse or social worker contact the home school or the parent?

NO. This is confidential information received by a licensed staff member in the course of their professional duties. The child may agree to sign a release form authorizing the specific individuals or entities that the staff member may speak to. The child may also agree to reveal this information themselves. In which case, the staff member should work with the child to determine how this might be approached, particularly if the child feels that there may be some form of retaliation or reprisal against them for the disclosure.

What if an under-aged child reveals that they are pregnant by an older person? Does this reveal the "contemplation of a crime or a harmful act" and allow the licensed professional to disclose the student's pregnancy or events surrounding it?

NO. The act which creates a danger has to be in the future. The student is already pregnant, so the "act" is done and in the past. However, the child may determine that they would like to bring charges against the individual, in which case they may be counseled on how to do so. No staff member can press charges on behalf of the child, nor, if a licensed staff member, disclose this information without the child's written consent.

May licensed staff or faculty ever "Hotline" a child, if this means sharing information obtained in confidence?

YES. There are instances in which the information shared reveals abuse or neglect, in which case the Department of Social Services may be notified to investigate. An example of this might be a young girl who reveals that she is pregnant, yet plans to continue to abuse drugs, alcohol or tobacco that might result in harm to her unborn child.

What if similar confidential information is shared with a "regular" teacher, who is not licensed? Are they bound by the same rules?

NO. They do not have the same sort of professional relationship with the child - and they are not bound by the same rules of disclosure. However, they must use extreme care and judgment in choosing what may be shared, with whom, and in what manner, always keeping in mind the child's well-being. In these cases, a discussion should occur with the teacher's supervisor before action is taken, or an agreement not to act is reached.

What if the child discloses to two people, present at the same time, for example to a BOCES social worker and a component building principal?

This information would be treated as confidential and could not be disclosed - as it occurred in the attempt to provide counseling to the child.

May counselors encourage students not to discuss their pregnancy or other confidential issue with their parents?

NO. Counselors must not coerce minors to refrain from communicating with their parents. Communication with parents about difficult issues should be encouraged, and must rest within the discretion of the minor.

What is the course of action to handle information about student pregnancies?

The prescribed course of action would be to strongly encourage students to speak to their parents regarding their pregnancy. However, if a student refuses to disclose this information to her parents, BOCES should not violate the student's privacy rights by informing the parents - whether the individual with that information is a licensed professional or other staff member.

BOCES should NOT inform the school district about the student's pregnancy. This would be a direct violation of HIPAA (Health Insurance Portability and Accountability Act), the federal regulations, and the student's constitutional right to privacy, and there could be serious legal repercussions if the pregnancy was disclosed.

If a young woman decides that she is going to abort, do we have a legal obligation to notify the parents and/or the school?

If a young woman decides to keep the baby, do we have a legal obligation to notify the parents and/or the school?

Whether the young woman decides to abort or keep the baby is largely irrelevant. The privacy and constitutional issue are generally the same as above. Therefore, BOCES should NOT notify the parents or the school about a young woman's decision to give birth or abort the fetus.