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Statewide Conference on the Professional, Ethical, and Legal Responsibilities of School Guidance Counselors in Maintaining, Using, and Releasing Student Records. Conference Report.

Altoona Area School District, Pa.; Pennsylvania State Dept. of Public Instruction, Harrisburg. Bureau of Pupil Personnel Services.

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A conference was held June 17-18, 1968, in Altoona, Pennsylvania, to discuss the professional, ethical, and legal ramifications of school counselor's keeping and using student records. Policy statements and guidelines for counselors are presented as a result of discussions following the presentation of three key papers, the texts of which are included. Harry J. Klein explores the professional responsibilities of the counselor in the expanding counseling program; Wilter M. Lifton presents a discussion of ethical standards and considerations to which the policy makers should attend; and John D. Killian discusses the legal rights and responsibilities of the counselor in his relationships to both clients and society. (BP)

Conference Report

Statewide Conference on the Professional, Ethical, and Legal Responsibilities of School Guidance Counselors in Maintaining, Using, and Releasing Student Records

Pennsylvania Department of Public Instruction 1968

CONFERENCE REPORT

STATEWIDE CONFERENCE
on the
PROFESSIONAL, ETHICAL, AND LEGAL RESPONSIBILITIES
of
SCHOOL GUIDANCE COUNSELORS
in
MAINTAINING, USING, AND RELEASING STUDENT RECORDS

Conducted by
The Research and Guidance Services Staff
Altoona Area School District
Altoona, Pennsylvania

A Project Supported by NDEA Title V-A Funds
Administered by
The Division of Guidance Services
Bureau of Pupil Personnel Services
Department of Public Instruction
Commonwealth of Pennsylvania

June 17 and 18, 1968

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FOREWORD

Acknowledging that the counselor in Pennsylvania faces a future of increasing legal complexity and hazard in maintaining and releasing student records, and that his performance must be guided increasingly by a knowledge and understanding of the ethical standards of his profession, the members of this conference expressed a deep and abiding concern with the conference topic and its ramifications. The depth of their concern and the breadth of their interest are difficult to convey in a report such as this, which is limited by the exigencies of time and space to the formal input of consultants' speeches and the skeletal outcomes of bone-bare recommendations and suggested guidelines.

The quality of their concern and interest best appeared in the spirited group discussions which defy adequate printed reproduction. But perhaps it may be at least partly indicated in their urging that they be recorded as strongly encouraging area, regional, county, and local meetings of guidance, administrative, and legal personnel to conduct follow-up and extension discussions of the issues raised in this conference; and in their further suggestion that the Pennsylvania School Counselors Association, the Pennsylvania Personnel and Guidance Association, the Pennsylvania Association of School Administrators, the Pennsylvania Association of Secondary Principals, the Pennsylvania Elementary Principals Association, the Department of Public Instruction, and the various legal associations of the Commonwealth be encouraged to become involved in meetings dealing with these issues.

This monograph, with its absence of annotated commentary, Department of Public Instruction pronouncement, and nitty-gritty application, is here presented as a record of the basic issues and ideas that wove themselves into the fabric of discussion at a meeting in Altoona. It is meant to be a point of embarkation to what we sincerely hope will be a long and continuing many-voiced dialogue echoing from one corner of the Commonwealth to another.

Arthur L. Glenn, Acting Director
Bureau of Pupil Personnel Services

CONFERENCE PROGRAM

Professional, Ethical, and Legal Responsibilities of Counselors
in Maintaining and Releasing Student Records

Conducted by the Counseling and Research Department
of the Altoona Area School District

Conference Site - Penn Alto Hotel
13th Avenue and 12th Street
Altoona, Pa.

Conference Schedule

Monday 17 June 1968

7:30 - 8:30	Breakfast - Logan Room
8:30 - 9:00	Registration - Logan Room
9:00 - 10:15	"The Primary Issue" - address by Dr. Harry Klein, Director of Pupil Services, Central Bucks School District, Doylestown, Pa. - War Governor's Suite
10:15 - 10:30	Coffee
10:30 - 11:30	"The Ethical Responsibilities of Counselors and Educators in Record Keeping Activities" - address by Dr. Walter Lifton, Rochester, New York, member of APGA Ethical Practices Committee - War Governor's Suite
11:45 - 1:00	Lunch - Logan Room
1:00 - 2:45	Discussion group work. Professional and Ethical Ramifications of Record Keeping Group A - Pennsylvania Room Group B - Parlor A Group C - War Governor's Suite
3:00 - 4:00	"Legal Responsibilities of Educators and Guidance Personnel in Record Keeping Activities" - address by Attorney John D. Killian, Harrisburg, Pa. - War Governor's Suite
4:00 - 5:30	Discussion group work. Legal Ramifications of Record Keeping
6:00	Dinner - Logan Room

Tuesday 18 June 1968

7:30 - 8:30	Breakfast - Logan Room
8:30 - 9:30	Reactions Sessions - Presenters, discussion leaders, participants - War Governor's Suite
9:30 - 9:45	Coffee
9:45 - 11:30	Development of guidelines and policy statements for Pennsylvania Counselors regarding record keeping responsibilities
11:45 - 1:00	Lunch - Logan Room
1:30 - ?	Concluding activities

CONFERENCE SUMMARY

This two day conference was held in the Penn Alto Hotel in Altoona, Pa. Approximately 115 persons participated in the sessions. The group was comprised primarily of elementary and secondary school counselors, counselor educators, and Department of Public Instruction staff members. Others represented included school administrators, board solicitors, attendance officers, county office personnel, and child welfare and rehabilitation workers.

On the opening day of the conference, the participants listened to the major presentations made by Dr. Klein, Dr. Lifton, and Attorney Killian and went into discussion groups to discuss and react to the speakers' comments regarding the professional, ethical, and legal ramifications of their record keeping responsibilities. These group sessions were positive, constructive, and active. Nearly all members actively participated.

On the second day of the conference the groups met with the speakers in a reaction session where the discussion leaders and others raised questions and sought clarification or elaboration of points made by the presenters in the opening speeches. This too, was an interesting and active session. In fact, the session had to be terminated to maintain the conference schedule.

Following the reaction sessions the group met to develop policy statements or guidelines for counselors to be included in the conference monograph to be produced by the Division of Guidance Services, Bureau of Pupil Personnel Services, Department of Public Instruction.

It was decided that in this initial state endeavor we should accept and include the seven points made by Attorney Killian in his presentation and also add as another of these points his concluding statement. Attorney Killian willingly consented to this procedure providing that he be given the privilege of editing the statements before final publication of the conference document. These statements are as follows:

GUIDELINES OR POLICY STATEMENTS

"1. Remember the importance of truth: don't deal in rumors or gossip.

2. Remember that the privilege is more likely to be qualified if you are communicating with the child's teachers, principals, supervisors, parents or guardians--individuals with an interest in or duty to the child.

3. Be very careful in discussing matters over the telephone. If an employer is seeking a recommendation, have him ask for information on his stationery so that you may reply in writing and have the copies of both his request and your reply. (Some people think it might be better not to put it in writing. If you think so, at least be certain to whom you are speaking).

4. Don't volunteer recommendations to prospective employers. You are on much sounder ground if you have a request for the recommendations. This helps to rule out malice.

5. When releasing possible injurious information and records to other teachers and administrators, be certain that the information is released in order to help the student, or to help you solve the problem of dealing with the student. Remember that you can talk to others generally about the problem and get their advice without revealing the name of the student.

6. Remember that not many teachers or counselors are sued for defamation. This is no reason to be lax in your use of possible damaging information, but also you should not fear a possible lawsuit so much that you fail to do your job properly.

7. Remember that judges, and even some lawyers are reasonable individuals! If you are in doubt over what to release in a judicial proceeding, don't hesitate to arrange a conference with the judge (or the attorneys, if appropriate) to explain your dilemma and get advice on how to proceed.

You have little to fear from the law if you perform in a professional and ethical manner. And professional and ethical does not mean angelic nor perfect.

The standards expected of a professional, legal or otherwise, are higher than those set for others. They should be. But if you perform reasonably, and without malice, in your efforts to meet your professional standards, I believe you will find the law and the courts your friends, not your adversaries."

From an address by
John D. Killian, Esq.
The Penn Alto Hotel
Altoona, Pa.
June 17, 1968

Following the discussion relative to Attorney Killian's statements the group made and amended several recommendations which were outgrowths of the topics discussed in the discussion and reaction sessions.

RECOMMENDATIONS

These recommendations include:

1. It is recommended that the Pennsylvania Personnel and Guidance Association establish an ethical practices committee to:

   (a) Advise counselors in general and PPGA members of APGA ethical standards.

   (b) Advise school practitioners with professional, legal, and ethical problems.

   (c) Work jointly with other professional groups in spelling out for and informing counselors of recommended policies and codes.

2. It is recommended that the twenty State Counselor Education Programs make a strong and definite effort to emphasize in appropriate course offerings, the growing importance of legal and ethical responsibilities in record keeping.

3. It is recommended that counselors through their professional associations develop an all encompassing awareness of the newer record keeping media which while being capable of alleviating some problems may create some new ones.

4. It is recommended that the State Division of Guidance Services provide leadership in the development of a State Policy of Records and Release similar to the one outlined by Heayn and Jacobs on pages 63-67, of the September 1967 issue of the APGA Journal.

It is further recommended that this State Policy be spelled out in regional in-service training sessions to meet the objectives of school districts at the local level.

(Conference Director's Note) Phoenix Arizona City Schools also have produced excellent policy statements regarding maintenance and release of student records.

5. It is recommended that counselors become aware of the codes of ethics of the APGA, NEA, and APA and that the State Division of Guidance Services, and/or PPGA and PSCA explore the possibility of publishing these codes under one cover and having them placed in the hands of appropriate school student personnel workers.

6. It is recommended that the State Division of Guidance Services explore the possibility of developing films, film-strips and other appropriate vehicles to assist professionals in the field to understand and interpret the ethical codes of the profession.

7. It is recommended that each school district's administrative and pupil personnel staff review the reasons for keeping certain student records and establish local policies to govern practitioners in the collection, maintenance, and release of such information.

8. It is recommended that state professional groups and organizations determine if privileged communication is needed in Pennsylvania and, if so, explore the advisability of actually requesting that some privileged communication be legislated for Pennsylvania school counselors.

9. It is recommended that the State Division of Guidance Services engage in a cooperative research endeavor with the guidance officials of some other

state which grants counselors privileged communication to determine how these counselors regard privilege and what problems it poses for them.

Following the guideline development and recommendation session the group had dinner and the conference was terminated.

It is interesting to note that after lunch many small groups, while waiting to leave Altoona, continued informal discussion of the conference topics. Some of these discussions continued until mid-afternoon.

ACKNOWLEDGEMENTS

Particular thanks are due to Dr. Edwin Herr and his Division of Guidance Services Staff including primarily Mr. Arthur Glenn and Mr. Robert Cox.

Thanks are also due Dr. Harry Klein, Dr. Walter Lifton, and Attorney John D. Killian for their insightful and professional presentations. We in Altoona are very grateful for the fine participation of our visiting colleagues who actually made the affair a true conference. The work of the recorders and discussion leaders was also of vital importance and professionally carried out.

Lastly, I wish to thank the Altoona Area School District Administration and Staff for its encouragement and support in this endeavor.

Thomas E. Long
Director of Research and Counseling Services
Conference Director

THE PRIMARY ISSUE

Harry J. Klein
Director of Pupil Services
Central Bucks County School District

May I insult your intelligence for a few minutes by reciting a litany of truisms with which you have been bombarded for the past decade? In essence, this litany goes something like this:

This is an era of constant change.

This is an era in which knowledge doubles quickly.

This is an era of complexity.

This is a technological era.

This is an era of population explosion.

This is an era of social revolution.

This is an era of increasing services and decreasing production.

This is an era of ecumenicism, or merging of interests, in many fields.

This is an era of population mobility.

This is an era of conflict.

This is an era of confusion over moral and ethical responsibilities.

Now, like any good litany, there should be a communal and common remark for each point in the litany, and, if you were of an impulsive nature, I am sure that your common response to each item in my litany of truisms would be: "AMEN". You have certainly heard speeches, read articles and been involved in countless discussions over the impact of each of these points upon education. We need not dwell on the proofs of these truisms. However, all good truisms are like the word from which they are formed. They are true!

Now, what has this to do with "The Primary Issue" in the professional, ethical and legal responsibilities of counselors in maintaining and releasing student records? I think it has everything to do with this topic because out of these litany items have grown the issues that make this conference topic so

timely and perplexing. With these litany items, then, as a kind of backdrop or setting for our stage, I would like to introduce you to some of the actors which are the issues in this melodrama about student records. From among these acting issues we may be able to pick one which is the leading actor or prime issue.

Before I begin, however, I would like to call attention to a basic assumption we all seem to have. This is the assumption implicit in the title of this conference which says that the counselor <u>is</u> the person with the professional responsibility, ethical responsibility and legal responsibility for maintaining and releasing student records. If we were to begin to question this assumption we could examine the very words "student records" and maybe qualify our responsibility for some but not others of these records. We may even question the premise on which we would accept responsibility for many facets of the gathering and keeping of student records. But, for the time being, let us assume that this is the responsibility of the counselors and examine the issues involved. But please keep in mind that this is an actor who lurks in the wings. In your discussions, you may wish to drag this issue out on the stage and subject it to the light for a little closer examination.

Now, in presenting our cast of issues, you will notice that there is an inter-relationship that belies the separateness with which I will deal with them. Like any good drama, they work together to weave the plot. Though we analyze the role they play separately, the impact each has upon another and the impact they produce totally is the stuff from which the plot is made. I have tried to deal with the issues confronting the counselor audience in his professional responsibilities for maintaining and releasing student records, but here again, they encroach upon the ethical and legal aspects of the counselor's responsibility. In the main, though, I have tried to leave these ethical and legal issues for your other speakers to introduce.

Back now to center stage! Here, then, are issues I see which play a major role in the counselor's professional responsibility for maintaining and releasing student records.

The first member of our cast, issue number one, is not necessarily the most important but just the first to be introduced and it is this: There is an increasing use of secretaries, clerks and para-professionals which impinges upon the confidential nature of many records and much data. When we examine the make-up of this issue we find that there has been a subtle but ever increasing change in this area over the past twenty years. Schools then, twenty years ago, were characteristically smaller than present day schools. Much clerical work was done by the professional staff, and the clerks or secretaries which did function were few but with a fierce dedication and loyalty that protected information even from the professional staff. Some of you may still have a vistage of this past era in your schools yet. Now take a look at our present schools. Characteristically, they are about three to five times larger; the professional staff is doing less and less clerical work; the office staff is much larger with a greater turnover and a more work-a-day approach to their job. Increasingly, we are adding clerks and sub-professionals to offices, including guidance offices, to accomplish the recording, sorting and filing of the increasing pile of information we have on students. With all of this increase have come problems to be solved. For example, who relays or interprets the information to employers or employment agencies when they call about a graduate? You will tell me that the counselor does, but I will bet that each of you has had problems with clerks who have given information over the phone to such people and especially during the summer, because the questions these people ask are seemingly harmless. They ask for QPA, attendance, ability level, certain grades such as typing and shorthand, personality characteristics and general impressions. All of this seems to be statistical data which can be read from a cumulative record card, but listen sometime to a clerk

interpret this data. The impression may be erroneous. As a result, I am sure many districts have had to inaugurate policies concerning the release of information, written or by phone, and who will do it. Let's not fool ourselves! Clerks do look at student records, and if they are from the community, curiosity is bound to lead them to check the records of kids in their neighborhood. I wonder how much of this gets into the community over a dinner table, bridge table or party drink? Worse yet, I wonder how much of it is garbled so that it is really misinformation.

One evening, when I had occasion to go back to the office to do some work, I found the night custodian going through the cumulative record files. He openly told me he wanted to see his grandson's records. I explained to him that we like to have someone familiar with the files talk about them and that I would get the record and go over it with him. I wonder if his perception of his grandson would have been different had he interpreted what he found there for himself?

Today's existentialist and human rights accent in our society points up the rights of the individual and I wonder about our responsibility in safeguarding even the most innocuous records through proper in-service for our sub-professionals and controlling the accessibility of such records.

It would seem, then, as we add more clerical and paraprofessional staff, we had better rethink some of the policies and procedures which will protect the individual rights of our students for the privacy they trust us to maintain for the segments of their life which are in our files.

Now, let me bring a second issue on stage. Issue number two, as I see it, is the increasing amount of better counseling being done in schools. As never before, the guidance counselor is putting more emphasis on counseling and less on guidance services. It is not our purpose today to argue the proper proportions in which these activities ought to be done. Today's literature and research does, however, support the contention that counselors are spending more time counseling

students. There are a number of reasons why this is so. I think Lucy Wing's article in the January issue of the Journal of the National Association of Secondary School Principals does a nice job of summing up these reasons. The entire issue of this journal is well worth reading. I will have occasion to refer to it again. This increased counseling has contributed to the dilemma of counselors in record keeping and release of information because of the much greater amount of information they have about students. Most counselors keep some running record of counseling sessions with a student. Preponderantly, I imagine, these are notes or write-ups of some kind, but there is an increasing use of tape by counselors to help them evaluate the interaction and more objectively hear the student again from a less involved point of view. Out of this comes a more insightful recording of notes on the counseling session. Obviously, what this means is that counselors are amassing a greater and greater amount of information about students that is personal in nature and, often, even confidential. For these either tape or written recordings of student sessions to be useful to the counselor, there must be a system available which permits the counselor to store this information and retrieve it quickly when needed. So, some of the practical considerations that grow out of this theoretical issue are: Where are counseling records kept? Who systematically stores them? and What protections are built in through policy and procedure to safeguard the security they deserve?

This second issue is the close companion to our third acting issue I am about to bring on stage. This third issue is: There is an increasing breadth and depth of data available about students. You will notice the two dimensions of this issue - breadth and depth. The counseling notes, would of course, be one major factor in the increasing depth of information about students which is available. Information in depth is furnished by psychologists, home and school visitors, often by teachers and administrators, too. We have, as counselors,

more techniques being used for depth analysis of student behavior through autobiographies, sentence completion blanks, problem check lists, and a host of other such techniques a school may choose to use.

If you have been involved recently in a revision of your cumulative record system, you can attest to the fact that there is a greater breadth of information available about students. Look at the gummed labels on most senior cum record cards and you see one dimension of the breadth of information now available about students. The new National Association of Secondary School Principals Personality Rating Characteristics are another more meaningful and useful tool to schools now and add more than just a perfunctory bit of information. Slip sheets for cum folders on special courses, honor courses, and AP courses are another variable new in the past ten years. Such sheets are really necessary to properly interpret a transcript any more.

Along with the increasing breadth and depth of information about students is a close, but separate fourth issue. I would suggest that issue number four is: There is an increasing number of pupil personnel staff members being added to schools who contribute data and information about students.

The Department of Public Instruction, Bureau of Guidance Services bulletin called "Keynotes" has kept you informed about the steady decrease in counselor-pupil ratios. This reflects the growth of counseling in junior high schools where counselors are now available to feed information to senior high schools. You are well aware of the trend toward more counselors at the elementary level. Think for a minute of the implications this has, not only on the spiraling amount of information this furnishes about students, but the implications it has for counselors to use this information in greater depth at the higher levels. It means that identification and tentative diagnosis of the learning difficulties will probably have been made quite early in the child's school life and a program of counseling and education have been begun to meet the needs of this child. As a

secondary counselor, it will be your job to take this already extensive information about this youngster and both use it for his greater learning and insight as well as for a base on which to build more and deeper information to be passed along to the senior high school counselor. The addition of these professionals at earlier levels will create a demand for more intensive guidance of all kinds at the later levels.

Now add to the increase in counselors the latest mandated ratio of students to school nurse which took effect several years ago. From one nurse for each two thousand students, we now have one nurse for each fifteen hundred students. Many districts I know, have lower ratios than that mandated. Here again, smaller ratios mean more time for each student and more pertinent information about a student's physical uniqueness which bears upon how he learns and, sometimes, if he learns.

Now, I have no data to support this next contention but I believe we are also decreasing the psychologist-student ratio and the home and school visitor-student ratio. I have only observation to support this, but if it matches your observations, then, we have even more information being gathered by these professionals. I think you begin to see the complexity of this issue. As more and more professional staff contribute more and more information about a student who coordinates what is known about, say Ezekial Schlumpf, an 11th grader? Where is all this information brought together so that a more comprehensive picture of Zeke begins to emerge? How do we feed back all this meaningful information to teachers so that it is used to help Zeke learn better in Miss Floof's English class or Mr. Peeper's math class? For, let's face it, if this information never finds its way back to the various classrooms in our buildings then we have missed the major reason for collecting information which is to improve that child's learning. Do we have a system of collating all this information, or does each professional operate in isolation, doling out what he knows when asked or when it is convenient? We are

impatient to add to our pupil personnel staff, but if we have this problem now, won't we compound it as we add more professionals to our schools? The practical consideration for the issue revolves around the coordination of information about any student - like Zeke - so that those who know something about Zeke, share it with others who know something else about Zeke, to those who need to know about Zeke in order to apply it to his learning needs.

Now, issue number five has been one small answer to issue number four but I think it has brought its own problems. Issue number five, as I see it, centers around the increasing use of machines in recording and reporting information about students.

Think for a few minutes and see if you have added a copy machine to your school office lately? Is your district involved in or planning to use data processing and other electronic systems in the near future? I think I would contend that within the next generation this issue will be Excedrin headache #1 for counselors. Speculate with me what happens when we get fully into an electronic system of recording, storing and retrieval of pupil data and information. There is one such system described by Gordon Ellis which is in use out in Arizona. You will find it written up in the journal I mentioned previously - The Journal of the National Association of Secondary School Principals for January of this year. The journal theme is "Progress in Pupil Services" and the article I refer to is entitled "Pupil Information and Records Systems" on page 99. In such a system you need only pick up your telephone, punch the blue button, dial a code number for Zeke Schlumpf and dictate your information. It now perches there until just before your next interview with Zeke when you pick up the phone, punch the green button, dial the code for Zeke and hear what you recorded last time plus information other professionals have recorded since then about him. Should you decide you want a print-out of the information available on Zeke, you pick up your phone, punch the red button, dial Zeke's code and then dictate your name and school code letters. Then that storage machine

talks to a printing machine in your building at the rate of thousands of words a minute so that the print out is ready before you can walk from your office to the machine room. With such a system, there is tape storage of all objective data, tests, grades, ratings, etc. about all the students in your school system. If you and the Business Department Chairman are curious about the correlation between shorthand grades and grades in 10th grade English, you can dial the computer room on your office phone, dictate your request and minutes later get a correlation coefficient between the two variables for the students who are now or who have ever taken the two subjects. Or, if you prefer, just this years students enrolled in the two subjects. A printed prediction chart of the two variables can even be furnished at the same time if you request it. This is not Buck Rogers stuff. It is presently technologically possible in all school systems, though not financially possible in most school systems. Through colleges and universities or cooperative school district efforts, it can be financially possible soon. Now I can hear you thinking: "That sounds terrific! I don't see where Excedrin Headache #1 comes in." I agree that it can be a tremendous boon to counselors and can make information so vital to teachers and departments very readily available. But think of the massive organizational structure this requires to set up such a system because machines can only give you back what you have first given them. Think of the initial amassing of information and the planning that must be carried out to have programmed in useful forms for future retrieval. What happens if you dial a wrong number? You get information you did not intend to get and, more importantly, you get information not necessarily meant for you. There is a distance, both physical and psychological, between you and the records. In essence, for the convenience and better use of data you are sacrificing control of these records and a certain irreversible imprint because data in such a system is more difficult to tear up or obliterate with the eraser end of your pencil. Now, please, lest you get the wrong impression, I am not opposed to such systems and, actually, look forward to the day when we can

have them in all schools. What I am trying to point out is the notion that we should not look ahead to such systems as the panecea of all our present day record troubles. These systems will solve some of our problems but will create other problems of their own which must be solved. Enough of tomorrow's problems, let's get back to those which face us today. In a small way, you are getting a taste of tomorrow today if you are relying heavily on copy machines to duplicate transcripts and records. In the "bad" old days, when all records were hand copied, you knew that a lot of the records could be revised or couched in different terms depending upon the use for which you were preparing them. Now, if a clerk duplicates a record or a transcript, your recommendation or comments are not subject to your revision. Have you had a tendency to be just a bit more general in some of your recommendations and might it be due to the fact that you have less control of what happens to them? I suppose the practical consideration for the issue of electronics and machinery in guidance is the increasing leeriness we have to commit ourselves in writing and how this concommitantly effects the individuality of the person about whom we are writing or dictating. I suspect that even though we are more sophisticated in what we know about students, we hedge more in what we actually put into official records.

Back to the stage again to train the spotlight on issue number six. This issue is: The increasing student mobility in and our of school that requires more and more transfer of information.

Gone are the days when most families were so rooted in the community that you could know all their relatives and ancestors and look forward, maybe, to having their children in the school. Today's population is becoming increasingly more mobile. Families move in and out of the community in ever greater numbers. This has brought with it some problems and considerations. Have you, for example, complained about the amount of information you get from a sending school about a new student? By the same token, do you get concerned about how much information you

send to a school to which one of your students is transferring? Have we ever really resolved whose record we are talking about? Is the record the school's or the student's? If it is really a cumulative record, should it not follow the student and a succinct summary remain at the sending school? We don't do this, of course. Should we? Does your school have a provision to send confidential information upon release by the parent to a competent professional in the receiving school?

This problem of mobility operates at other than the student levels, too. With greater turnover in professional staff, several problems present themselves. For example, if a counselor, psychologist or home and school visitor leave your system, do they brief someone on their personal files and leave them there? What do you do about the release of a psychological if the examining person has left your district and is not easily reached to release a report? What is the procedure and who is responsible for making the decision to release or not release this information?

Most schools are both adding new teaching staff as well as filling turnover positions for existing staff. It seems that we just assume these new people will pick up our records and reporting system and have the sophistication to use them and add to them. Too often, any orientation they get to how and where and why we maintain student records is very cursory. Any time spent in either a series of transparencies or slides for the orientation of new staff to our methods and procedures of maintaining and interpeting student records would be well spent and could be updated with minimal effort periodically. Ultimate benefits reaped from this initial investment would more than repay the time and money involved.

Trotting out on the stage, now, is issue number seven. It says that there is an increasing sociological change in our students.

Our society is changing constantly and the culture of the school and our student body reflects this change. In our senior high schools now, it is not too

unusual to have a married student or an unwed mother who has returned for her diploma. I have yet to see a cumulative record card that has a space to check whether a student is married or single. I have never seen spaces for the names and ages of a students children to be listed. Where shall we keep such information in our record system? Or -- do we keep it? Today's schools have students who have been institutionalized as delinquents. When they return to our schools we shall be getting records from these institutions for inclusion in school records. These institutions for delinquents are more and more taking on the character of rehabilitation and may have something valuable about this child which we need to have prominently in our system of records.

I am sure you are all experiencing the impact of our society's increasing sophistication about mental health. Fifteen years ago you would never have suggested to a parent that they take a child to a psychiatrist or mental health clinic. Today, however, though it is not a popular suggestion, it is one that schools increasingly make and one which many parents will accept and implement. As we maintain liaison with these various therapeutic agents or agencies, we accumulate confidential information that is valuable for the child's containment in school but which we must take care how and to whom we impart such information.

Many schools now have access to psychiatric consultation on a regular basis about their problem children. Such schools now have psychiatric reports as part of their files on students.

Sociologically, divorce and remarriage are more prevalent now. This is data that can help explain a child's behavior and should be in our records.

In the same vein, adoption is another sociological phenomenon which has mushroomed in our time. This is information we now have in our files, too.

Because of the school lunch program and the medical and dental aid programs, we now know which families are on the department of Public Assistance roles. Again this is valuable, but touchy, information.

I suppose the substance of this issue is that the school now is in possession of much sociological information that, to some extent, invades the privacy of the family. There is no argument about its value to the school in properly using it to provide the best possible education for its children; but, with the right to this information comes the corollary responsibility to protect the information and use it judiciously.

And now, finally, our last issue can be brought on stage. I have saved it until last because I believe it is the most vital issue with which we must deal. If you remember only this one of the eight issues presented, I think I would be content.

Issue number eight, the last, is the increasing confusion (even failure) to set objectives which we want student records to meet as we professionally maintain and release them. I think we see evidence of this confusion in the very diversity of cumulative record cards or folders and the various forms we use. I don't believe any two districts in this state are even remotely alike in these forms. I have no argument with diversity but when I cannot get a good reason why they chose to be diverse, I do wonder. I think most of the reasoning in our record systems is a matter of pragmatic expediency. We choose the easiest way we can find to contain the records we have. Our thinking about records, as well as our system of records, is past oriented and separateness oriented. We file cum folders in one spot, health records in another, psychologist's records in still another, home and school visitor's reports are filed separately, and our own counseling notes in yet another place. It is almost an accident if we ever get them all in one place at one time. Besides being separate, our records are past oriented. Of necessity, records are history, but we use history to understand the present and predict the future. I would contend that rather than past oriented and apart, our records ought to be present oriented and together, as much as possible. Counselors do, I believe, try to use records in this way, but they don't think of them in this manner when they

revise a record system. It seems then they go back to their pragmatic expedient way of dealing with what is to be done.

All records and I mean ALL records exist in a school setting to help diagnose the student's learning needs and prescribe a school program to meet those needs. This cannot be done unless the teachers, who implement the program, also know thoroughly the student's needs and why this program was prescribed. In fact, I suggest that they help us prescribe the program after reviewing together, what is known about the student.

Glanz, in his book on guidance, accuses counselors of a "chauvinistic paternalism in jealously guarding records." There may be some truth in his accusation because, time and again, I have heard counselors say: "I wouldn't trust our teachers with this information." In some cases they may be right, but I think it is a calculated risk we must take. I guess I would have to qualify this last statement with two conditions:

1. We record and report only what is fact.

2. We report or divulge it in a professional manner. Under these conditions, I believe your professional staff will react professionally to it. Now, I do not mean to foist the matter of confidentiality off so lightly. It is not a light matter. Confidentiality has serious ethical and legal considerations. Professionally, we, as individuals, must define what we mean by confidential and then embrace a philosophy within which we live with it.

In substance, then, I think the primary issue facing us is a close definition of what student records are and objectives for what we want student records to say and do. With this as a base, we then implement a system which will help us meet our objectives and channel the information to the instructional staff who must be our partners in its effective operation.

Now, our stage is set. You have the litany backdrop that set the scene and character analysis of each of the eight actor issues that comprise the cast. Now

it is your turn. You must formulate the plot; relegate the cast either to lead status or bit player, and write the script. You have my suggestion for the lead but only you can decide if he fits the lead part in your play.

I have chosen, as my part in this program this morning, to set some parameters for us by raising issues. I have alluded to solutions, but for the most part, I hoped to stimulate your thinking so that you would provide the solutions to the issues which face us professionally. I am sure there are issues on which I did not touch. I hope that this afternoon you would raise those you see as well as challenge those I see.

Before I close, may I remind you again of our bashful issue who still lurks in the wings. You will recall that this is the basic assumption in the topic of this conference. You may want to decide how much responsibility counselors need to have in maintaining and releasing student records.

I am looking forward to exchanging ideas with you today and tomorrow. I am sure we shall all go home with better perspectives as a result of this conference.

Thank you.

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THE ETHICAL RESPONSIBILITIES OF COUNSELORS AND EDUCATORS IN RECORD KEEPING ACTIVITIES

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No discussion of the ethical responsibilities of counselors or educators can start with the record keeping function which is the theme of this conference. The starting place must be instead with the philosophy and policies of the employing institution. There are a number of pertinent reasons why this is so:

1. The first obligation of any professional is to uphold the policies of the institution which has hired him. Because this is the primary consideration, it is incumbent on a candidate for a position to ensure that he is comfortable with agency policy before he accepts the position.

2. Records are not important in and of themselves. The more critical questions are: Why is the data being gathered? How valid is the information being recorded? Who is going to use the information? Is the form and nature of the material suitable for use for the stated purpose? It is in the last area, where suitability is questioned, that educational institutions have the greatest difficulty. The concept, for example, that data gathered in the form of cumulative records can serve the needs of different populations, demands close inspection.

3. The rights and privileges of the counselor or educator frequently depend on the nature of the institution which employs him. Questions of licensing, certification, and the autonomy of the agency have direct bearing on the legal rights of the professional to the privilege of maintaining as privileged and confidential the information he gathers. It is because of this that many

states are moving toward licensing of professionals so legal questions about privileged information are resolved immediately by the licensing law (see Bill No. 2539, introduced into the New York State Legislature. Appendix A).

4. Conflicting needs of an agency can create contradictions in the way information is handled or recorded. Consider, for example, the almost universal practice today of avoiding any record which can be used for discriminatory acts, while at the same time requiring reports on the number of minority group members present in a class or in a school.

5. Society is not consistent in its attitudes toward similar problems. Fair employment practices bar listing of race, but permit designating the sex or age of the client. Yet a woman can claim discrimination on the basis of her sex, and older people frequently are convinced that jobs are not offered because of their age.

6. A more subtle but equally relevant problem stems from the way one agency handles the data received from another agency. For example, many communities maintain a "Central Index" which consists of a register of all clients served by all participating agencies. To have access to this information each agency must submit information about itself to demonstrate that its members can understand and handle the sensitive data available from the cooperating agencies. Each agency can then contact the other agencies known to be serving their client. The type of data made available to the inquiring agency remains the prerogative of the giver. Implicit is an agreement that this data shall not be made available to a third party without the express consent of

the agency supplying the data. In the case of public agencies, a sticky question arises as to whether data from other agencies, in the folder of a client, now are available under the policies of this second agency. Is data received from Family Service about a child, and maintained as part of a school record, now available to school and other public agency personnel? (See Appendix B - copy of form sent to Rochester Central Index).

7. The last illustration about agency philosophy to be presentedalso represents agency attitude toward clients. To illustrate this point, let me remind counselors that many years ago Clifford Froehlich strongly suggested that records about students be kept by the students. His point was that the goal of guidance was to help the client understand data about himself so that he, the client, could make the wisest decisions. Data is not to be for use on clients but by them. With this attitude records are client property, not school property, and the data collection is client centered, not agency centered. This basic difference in emphasis carries with it many associated differences about the school's role in maintaining or releasing records.

Before discussing some other aspects of the problem, I would like to present a brief summary of some of the relevant standards about records and information dissemination which are part of the APGA Ethical Standards Casebook (Ethical Practices Committee, APGA, July 1965). The numbers following each statement refer to the page in the Casebook where both the standard and illustrative and explanatory material can be found.

"The member who provides information to the public or to his subordinates, peers, or superiors has a clear responsibility to see that both the content and the manner of presentation are accurate and appropriate to the situation." p. 11 (8)

"The member has an obligation to ensure that evaluative information about such persons as clients, students, and applicants shall be shared only with those persons who will use such information for professional purposes." p. 12 (9)

"The counseling relationship and information resulting therefrom must be kept confidential consistent with the obligations of the member as a professional person." p. 15 (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." p. 17 (3)

"Generally, test results constitute only one of a variety of pertinent data for personnel and guidance decisions. It is the member's responsibility to provide adequate orientation or information to the examinee(s) so that the results of testing may be placed in proper perspective with other relevant factors." p. 27 (2)

"The member has the responsibility to inform the examinee(s) as to the purpose of testing. The criteria of examinee's welfare and/or explicit prior understanding with him should determine who the recipients of test results may be." p. 32 (8)

"The member is responsible for establishing working agreements with supervisors and with subordinates especially regarding counseling or clinical relationships, confidentiality, distinction between public and private material, and a mutual respect for the position of parties involved in such issues." p. 47 (1)

The following material from the APA series of ethical principles may also be helpful:

"Principle 5. Public Statements. Modesty, scientific caution, and due regard for the limits of present knowledge characterize all statements of psychologists who supply information to the public, either directly or indirectly."

"Principle 6. Confidentiality. Safeguarding information about an individual that has been obtained by the psychologist in the course of his teaching, practice, or investigation is a primary obligation of the psychologist. Such information is not communicated to others unless certain important conditions are met."

"Principle 7. Client Welfare. The psychologist respects the integrity and protects the welfare of the person or group with whom he is working."

There is one final source that I believe any group interested in developing a code governing the legal responsibilities of counselors in maintaining or releasing student records ought to review. It is a text sponsored by the National Organization on Legal Problems of Education, entitled Law of Guidance and Counseling, edited by Martha L. Ware, and published by The W. H. Anderson Company, Cincinnati, Ohio, 1964. Included are numerous court cases where the legal issues involved in the problem have been examined.

The point has been made repeatedly that standards are a function of the employing agency, the laws of the state, and the professional role and skill of the user. This means that no national rule of thumb can be applied and that each state and ultimately each local agency will have to try to clarify how they can best reflect their local mores, community agency relationships, and operating philosophy.

It might be helpful to hear one statement developed by the Legal Counsel for the Rochester City School District. Mrs. June Weisberger writes (in the December 1967 PPS Newsletter, Rochester, N. Y.):

"Professional school personnel are often called upon to evaluate or counsel with pupils. At times the substance of conclusions or communications based upon confidential staff-pupil relationships are written and become 'records'. School records may sometimes include comments or conclusions concerning a pupil's family or acquaintances. How 'confidential' are these records?

"The general rule is that school district records are public records and boards of education are required to make these available for inspection to any qualified voter of the district. However, not all school records are considered public records. For example, budget worksheets, preliminary reports, summaries of items discussed by the staff, background data and private communications with outside agencies are probably not public records although there is little law defining clearly when a written sheet becomes a public record and when it does not. It has been held, however, that certain school records, including pupil health records, report cards, progress reports, subject grades, intelligence quotients, tests, achievement scores, medical records, school psychological and psychiatric reports, selective guidance notes, and the evaluations of students by educators are usually not available for inspection by a third party, except with the consent of the pupil's parent or guardian. The New York Commissioner of Education has held that parents or guardians <u>as a matter of law</u> are entitled to such information. The school may insist, however, that a qualified person must be present to interpret the meaning of records to parents or guardians.

"While the general public has no right to inspect individual pupil records without permission of the parent or guardian, pupil records may be subpoenaed by court order for use in a wide variety of legal actions, including negligence cases, matrimonial cases (particularly custody cases) and criminal matters. At the present time in New York State, there is no general privilege that may be invoked by school attendance teachers, school social workers, school psychologists, or school counselors (or by the school district on behalf of staff or pupils) similar to the privilege extended to attorneys or doctors which prevents disclosure of the contents of confidential communications or records without the consent of the client or patient.

"In general, therefore, school mental health workers are not covered by an express statutory privilege and may be compelled by court subpoena to disclose the contents of confidential records or oral communications. However, there is a statutory privilege protecting the confidential relations and communications between a certified psychologist or a certified social worker and his client from court subpoena. This privilege is incorporated into the New York statutes which set forth certification procedures for these two professional groups (see Sections 7611 and 7710, Education Law). It is interesting to note that some interest has been expressed by various professional organizations to work for legislation to extend the privilege currently covering certified psychologists and certified social workers to other allied professionals.

"Whether or not the New York State legislature acts within the near future to provide increased statutory protection for

confidential communications of school mental health workers, there are certain basic guide lines which should be generally followed by those school professionals who record confidential matter concerning pupils:

1. Factual observations and material should be included in reports or evaluations, not mere conclusions without an explicit basis.
2. Professional opinions should be carefully worded and reasonably related to the education process.
3. Comments should be based upon a high standard of professional conduct, made in good faith and be as reliable as possible in the light of all circumstances involved."

Earlier in this paper reference was made to the work of Clifford Froelich as a basis for raising the question as to the ultimate consumer of the data that has been recorded. An equally challenging philosophical question comes from the current validity of data recorded in the past. From a phenomenological point of view, and from an existential point of view, the only really meaningful data comes from the here and now behavior and perceptions of the individual involved. A college freshman, seeking a transfer in his sophomore year to a different college, objected strenuously to the use of his high school record as a basis for selection. As a late bloomer who had experienced a sudden spurt of maturity in his freshman year, he felt that the picture of him available through his high school records bore little similarity to the person he had become and who would be attending the university as a sophomore.

Equally relevant are the questions being raised today by members of the disadvantaged sectors of our society. They claim, with some justification, that test scores that are culturally biased predispose teachers and others to have

expectations of students that have little relationship to their real potential. As a matter of fact, there is some evidence that data leading to a diagnosis has a negative effect on both the diagnostician and the person being diagnosed. Because of unconscious ego involvement in the diagnosis, the diagnostician is more likely to perceive data confirming the validity of his diagnosis than data which would prove its error. The client, unsure of who he is or what he can become, all too often takes the label as his lot and sets his goals and behavior accordingly.

Hopefully the point has been made that data gathered and recorded does not exist in a vacuum. By its existence it affects both the recorder and the people who have access to the data and who perceive its meaning through eyes which see that which makes sense and is congruent with their values.

One final word about the impact of having to record data, on the behavior of the counselor. The counselor who is asked to gather data which will help administration decide the courses or tracks into which students will be placed, unescapably finds himself looking for common characteristics shared by groups of individuals rather than for the uniqueness of the person or the types of individualized learning situations which will provide the optimum environment for a specific individual. The data secured under this administrative charge has to be focused toward fitting the client into the existing framework of the institution, rather than in seeking ways to charge the institution with the need to change to meet their obligation to each individual.

A word needs also to be said about the way in which administrative needs and the forms designed to meet these needs affect the ongoing counselor client relationship. All too often counselors, to save time, tend to ask questions of clients designed to give the specific data in the specific order in which it appears on the form.

"Your last name, please; first; middle name, if any; date of birth; siblings; father's name, etc. etc."

As counselors we claim to be concerned with the client's self-concept. Suppose I were to ask you to tell me about yourself. What would you mention first? What things would you select to talk about? What incidents might you feel you need to tell to explain the facts you are presenting? Does not the way a person chooses to present himself provide a significant start which the counselor can use to help the client see the picture of himself he is giving to others? Typically, much of the data desired by administration will be included. It will be the counselor's job to select the facts and reorganize them to fit the form. Open-ended questions may be needed to secure missing data. "Can you tell me something about your family?" The process and purpose, however, should remain congruent to the needs of the client.

I have tried to develop some summary statements which could tie together the many ideas presented. What has resulted is a personal credo on the ethical responsibilities of the counselor. It goes something like this:

"I believe that the only purpose for my professional existence is to help my client become the kind of person who best reflects that individual's potential and personal values.

"I believe clients should have maximum control in making the choices which will determine their future. I have the responsibility to see to it that these choices are based upon as much data as can be made available. I also have a responsibility in helping clients learn the decision making process.

"I believe that the rights of the client are to be restricted only when their own behavior suggests they are not able to function in a sane manner, or when their behavior will do irreparable harm to others.

"I believe that the purpose of institutions and forms are to assist in these goals, and where they do not, I have a responsibility both as a professional and as a citizen to work toward changes which will better serve the clients of the agency."

STATE OF NEW YORK

2839

IN ASSEMBLY

January 23, 1968

Introduced by Mr. MARGIOTTA - read once and referred to the Committee on Education

AN ACT

To amend the education law, in relation to guidance counseling services in the schools

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The education law is hereby amended by adding thereto a new section, to be section three thousand thirty, to read as follows:

§ 3030. Confidential counseling services in the schools. No guidance counselor, counselor specialist or school psychologist, licensed or certified pursuant to the provisions of this chapter and engaged in character building and child development in the public schools or in any other educational institution, who receives in confidence communications from students or other juveniles, or persons in parental relationship, or from any physician, psychologist or other privileged source, shall be allowed or required in any proceeding,

Explanation - Matter underlined is new; matter in brackets [ ] is old law to be omitted.

civil or criminal, to disclose any information obtained by him from such communications, nor shall he be allowed or required to produce records or transcripts thereof; provided, however, that such testimony or evidence shall be given with the consent of the person counseled or to whom such records relate if such person be twenty-one years of age or over or, if such a person be a minor, with the consent of his or her parent or legal guardian.

§ 2. This act shall take effect immediately.

CENTRAL INDEX MEMBER-USER AGREEMENT

_____

(Member-User Agency)

CENTRAL INDEX, a department of the Council of Social Agencies, is a cooperative enterprise for facilitating services rendered by member users in the health, welfare and recreational agencies, both public and private, in Rochester and Monroe County. The organization, methods of operation and the practices of Central Index are designed to protect the confidential nature of the relationship between member agencies and their clients. Participation in Central Index involves a two way process - the giving of and the securing of information. The Index can be of maximum usefulness only when each member understands the use made of Central Index by other members.

In participating in the use of Central Index, an agency agrees:

1. TO DEFINE ITS OWN POLICY AND PROCEDURES IN THE USE OF CENTRAL INDEX, AND TO SUBMIT A COPY OF ITS POLICY STATEMENT TO THE CENTRAL INDEX CONSULTATIVE COMMITTEE FOR APPROVAL.

   Completion of this form satisfies Rule 1. If agency has written policies relative to Central Index, please attach copy.

2. TO INDICATE IN THE POLICY STATEMENT WHICH OF THE FOLLOWING METHODS OF REGISTRATION IT ELECTS:

   a. REGISTER ALL CASES EITHER AT THE POINT OF APPLICATION OR AFTER THE INTAKE INTERVIEW. Social worker registers after one interview with parent or parent substitute.
   b. REGISTER ACTIVE CASES ON A SELECTIVE BASIS AND DESCRIBE THE SELECTIVE PROCESS IN THE POLICY STATEMENT.

   Agency policy in regard to method of registration is:
   (If selective registration is used - outline basis for selection)
   All psychological records involving therapeutic contacts with parent or child to extend over a period of time.
   All referrals to psychiatric consultants.
   All records involving extensive diagnostic testing.

3. TO SUBMIT IN WRITING WITHOUT DELAY ANY CHANGE IN POLICY TO THE CENTRAL INDEX CONSULTATIVE COMMITTEE FOR APPROVAL.

   Agency policy is: to comply.

4. TO REAFFIRM IN WRITING ANNUALLY THE AGENCY'S POLICY STATEMENT AND ITS WILLINGNESS TO ABIDE BY THE MEMBER-USER AGREEMENT.

   Agency policy is: to comply.

5. TO SHARE AGENCY'S OWN INFORMATION ABOUT CLIENTS WITH OTHER MEMBER-USERS TO THE EXTENT THAT IT IS LEGALLY AND ETHICALLY ABLE TO DO.

Agency policy is: Psychological material may be shared in response to a request for specific information. Proper identification of the asking person and a signed permission slip will be required before information can be shared.

6. TO WITHHOLD FROM THE INQUIRING AGENCY ALL INFORMATION IT HAS RECEIVED FROM ANOTHER AGENCY UNLESS IT HAS BEEN AUTHORIZED IN WRITING TO PASS ON SPECIFIC INFORMATION.

   Agency policy is: Adherence to this rule except in emergency situations for the welfare of the client.

7. TO PINPOINT, WHEN MAKING AN INQUIRY, THE SPECIFIC INFORMATION IT IS REQUESTING.

   Agency policy is: We tell them the nature of the problem and ask them for material which will help solve it.

8. TO USE THE INFORMATION RECEIVED IN SUCH WAYS THAT THE RELATIONSHIP BETWEEN THE CLIENT AND THE AGENCY SHARING THE INFORMATION WILL BE SAFEGUARDED.

   Agency policy is: No exceptions.

9. TO RE-REGISTER RE-OPENED CASES IF THE PERIOD OF NOTIFICATION SERVICE HAS EXPIRED, AND ARRANGE FOR RE-CLEARANCE OF AGENCY'S ACTIVE CASES AT A TIME MUTUALLY AGREEABLE.

   Agency policy is: We reregister at three-year intervals if a record of one of the siblings comes within one of the categories listed in 2b.

10. TO CANCEL A REGISTRATION WHEN THE RECORD IS DESTROYED, OR WHEN IT NO LONGER CONTAINS INFORMATION THAT CAN BE SHARED WITH ANOTHER AGENCY.

    Agency policy is: If record is destroyed when child reaches age of twenty, registration is cancelled at that time.

11. TO MAKE SURE THAT ALL STAFF ARE CURRENTLY FAMILIAR WITH THE POLICIES OF CENTRAL INDEX AND THE VALUES OF ITS CORRECT USE.

    Agency policy is: To keep department handbook statement up to date.

City School District of Rochester, N. Y.
Mental Health Clinical Services
(Member-User Agency)

submits this statement, in compliance with Rule 1 of the Member-User Agreement, as a condition for participation in the use of Central Index.

Morris Sandgrund, Acting Director

(Authorized Signature)

Date: May 15, 1968

LEGAL RESPONSIBILITIES OF EDUCATORS AND GUIDANCE PERSONNEL IN RECORD KEEPING ACTIVITIES

Address by John D. Killian, Esq.

The basic problem involved in the maintenance of student records is the fact that improper release of the contents thereof may result in personal liability for defamation of the student or the invasion of his civil rights.

The issue involves respect for the privacy of the individual versus the need of the public to know matters of record.

The number and complexity of student records is increasing markedly. Records are now kept involving personal facts, family data, scholarship, test scores, attendance, health, behavior, employment, activities and miscellaneous matters.

Sloppy recording of information and careless release of data, are getting school boards and personnel in frequent legal trouble.

Teachers, administrators and counsellors have occasion to make unfavorable statements relating to students in reports of conduct, reasons for school dismissal and in replies to requests for recommendations from other schools or employment sources.

This leads to litigation involving the tort of defamation. This has been called the "unwary trap" for school personnel.

Examples of potential defamations are:

(a) Telephone talk about a child's mental test score;

(b) Telling a bystander in the office about a boy's failing grade; and

(c) Relaying information about a student to a third party when it is clearly not one's professional obligation.

The basic rule to be observed in order to avoid trouble is that information obtained in private, whether by means of counselling or consulting relationships, should be discussed only in the strictest professional setting with persons who have a legitimate and demonstrable interest or concern.

There is not much declared law about student records. The courts have held that "due process" is the basic constitutional protection to safeguarding confidences. A California case has recognized that the "negligent release of a transcript" might subject a school to a suit for violation of the student's right of privacy.

Computers complicate the problem because of the quantity of information which can be made available.

Although school districts are public instrumentalities, it is not necessarily true that student records are public records. The Public Records Act of June 21, 1957, P.L. 390, exempts from public inspection "any report, communication or other paper, the publication of which would disclose the institution, progress or result of an investigation undertaken by the agency in the performance of its official duties, or any record, document, material, exhibit, pleading, report, memorandum or other paper, access to or the publication of which***** would operate to the prejudice or impairment of a person's reputation or personal security." This factor will prohibit the release of many student records to parents, other school personnel, prospective employers, government agencies and other schools and colleges.

Background

From a legal standpoint, there are two sides to the confidentiality coin and both must be examined. First, there is the question of releasing information about students. What information about students must be released, to whom, and what for? Second, there is the question of liability of the counsellor for releasing certain information about students.

Generally the attitude of most courts toward professional school employes who come before them is reasonable. I mention this because I do not believe you should fear either the law or the courts which interpret the law.

However, you should be aware of the legal implications of counselling which may cause you to become a defendant in a law suit. You should also be aware, that if sued, there are certain defenses available to you which may help you to win the case. After all, a law suit may be filed, even though the plaintiff has little chance of winning.

Student Records

The controversy in public education over the release of student records is often as violent as the one raging over educational "frills". To whom should student records be released, to whom must they be released, and what parts of them should be released?

One can hardly pick up an educational journal without finding an article on the pros and cons of releasing student personnel records to parents or to others. There are educational answers, as well as legal answers, to these questions, but I will leave the former to you.

However, I would like to mention two non-legal statements on the subject, for they are of considerable interest. The first was issued by the American Personnel and Guidance Association on June 1, 1961, on the use of student records. The APGA said in this statement, among other things, that parents have rights and responsibilities to learn and know of their children's status in educational institutions and have quite different roles than third parties. This of course is an important point--this difference between parents and third parties--and it will come up several times in my remarks.

The APGA made another important point regarding the content of the records. That was that educational institutions are responsible for insuring that the content and manner of records gathered are limited to those materials that contribute to its efforts to educate the students. Records should differentiate between those entries which are observation and those which are inferential in nature.

The American Personnel and Guidance Association is a logical agency to issue policy statements on this subject. However, other groups are extremely interested in this problem. For example, the Academic Freedom Committee of the American Civil Liberties Union has adopted a statement entitled "Teacher Disclosure of Information About Students to Prospective Employers". The ACLU believes the teacher-student relation is a "privileged" one, that the student does not normally expect that his utterances in the classroom, or his discussions with teachers, or his written views will be reported outside the college or school community. It is somewhat similiar, the ACLU believes, to the relationship of doctor and patient or lawyer and client. The ACLU point of view is more one of ethics than of law. Its conclusion is that teachers' comments to prospective employers should relate to what the student has demonstrated as a student--for example, the ability to write in a certain way, to solve problems of a certain kind, to reason consistently, to direct personnel or projects--since this poses no threat to educational privacy. But it says that questions relating to the student's loyalty and patriotism, his political or religious, or moral, or social beliefs and attitudes, his general outlook and his private life may well jeopardize the teacher-student relation.

The Union stresses this danger even though it recognizes that there may be much important information which a teacher has acquired about a student, and that teachers are often the best possible judges of a student's development during the years immediately preceding employment and even though a student may request that this information be released.

Note the different emphasis of the statements. The APGA statement concerns the release of records to parents, primarily. ACLU is concerned more with the opinions of teachers about students given to third parties. We are fast becoming a nation of cumulative records and record keepers and the ACLU seems to be worried about the destruction of the teacher-student relationship if everything

about the student is written down or released to anyone who says he wants the information.

The Law

Do we find much in the law to help us? I must answer yes and no. Certainly there are few court cases or statutes which specifically are applicable to teachers and counsellors. On the other hand, there is much on confidentiality generally--statutes and court cases on physician-patient and lawyer-client relationships.

There are two types of privileges accorded confidential communications. There is the absolute privilege of communication between doctor and patient and lawyer and client, and there is the qualified privilege. Unless granted by statute, counsellors' communications do not fall in the absolute privileged class. A few states, by statute, do grant privileges similar to those granted in the doctor-patient relationship, but more often to licensed psychologists than to counsellors not so licensed.

When you think about a lawsuit, you should think of three questions:

1. Who is suing?
2. What is he seeking?
3. Whom is he suing?

For example, our concern here is student records. Who would be suing to obtain access to them? It most likely would be the parent. Who else would have an interest in them--legal or otherwise? Perhaps a governmental agency. Or, they might be necessary to a lawsuit as evidence, in which case they could be subpoenaed. I will discuss judicial proceedings later.

In all probability the parent would sue, and he would be seeking the records of his child. Whom would he sue? The counsellor? I doubt it.

Don't you think that a counsellor, or any other staff member in charge of records would probably check with the administration before releasing records in

such a case? What he does would also be in line with governing board rule or policy. So, if he refuses absolutely to release the records and the parent sues, it seems to be that the parent would sue the governing board seeking release of the records. That is precisely what happened in the two recent cases in New York state which have caused considerable concern in the counselling field.

In the case of Van Allen v. McCleary, 211 N.Y.S. 2d 501 (New York 1961) a parent sought a court order directing the school board (not a counsellor) to permit him to inspect all the school records of his son. These were the facts: Upon word from certain members of the public school faculty that his son needed psychological treatment, the parent retained the services of a private physician, who with the parent's written authorization, asked for an abstract of the psychological findings. When only a copy of the report on the pupil, written for the guidance of school personnel was sent to the physician, the parent made a formal written demand to the school board to make available all the school records of his son. The board refused the demand and outlined its plan to keep the parent informed of his son's progress through report cards, private conferences with teachers, and if requested, interpretation of the pupil's personal file by qualified personnel by the conference method.

The parent, however, wanted to see the written records and accused the board of concealment in order to cover up "incompetency of one or more taxpayer paid school employes." New York State at this time had no statute on this subject. The regulations of the State Commissioner of Education require that the school board maintain certain cumulative records on health, mental hygiene, physical education, etc., and require that the health records be kept confidential, except as may be necessary for the use of approved personnel and "with the consent of parents or guardians for the use of appropriate health personnel of cooperating agencies." These regulations are silent on the right of either pupil or parent to inspect the child's record. However, the Commissioner of Education had

already ruled in another matter that as a matter of law parents have the right to inspect all the records of their children.

The court held that in the absence of constitutional, legislative, or administrative permission or prohibition, the parent as a matter of law is entitled to inspect the records of his child and an order was issued directing the school officials to submit the records for inspection. The opinion noted that the parent's right to see the school records stems from "his relationship with the school authorities as a parent who, under compulsory education has delegated to them the educational authority over his child."

The usual arguments for not turning over the records, such as safeguarding and preventing misinterpretation by parents of records of a highly professional and technical nature, and the desirability of preserving the professional freedom of expression of psychologists and other teachers free from fear of libel suits, and parental retaliation, and the danger of parents seeing information critical of the home environment and of the child were raised. The court rejected all of them, and noted that there are powerful answers to them. However, it did not state what these answers were. The court added that the determination of these arguments rests not with the court but with the legislature or the Commissioner of Education who has broad delegated power to act.

In the other case, Johnson v. Board of Education of City of New York, 220 N.Y.S. 2d 363 (New York 1961), the board was sued on similar grounds. In this case the parents wanted the court to issue an order compelling the school board to permit inspection of the records prior to a particular trial. The trial concerned another action which was not school connected and in which the child had suffered severe brain damage. The board refused to allow the records to be inspected on the ground that the parents should use their right of subpoena upon trial, and also that the records were confidential.

The court held that the parents were entitled to inspect the school records before trial. The rule that "the parent as a matter of law is entitled to such

information" under proper safeguards overcomes the objection that the records are confidential. The application to inspect was granted on condition that the examination and inspection of the records take place in the office of the school board under such supervision as shall be provided in the court order.

In an old Iowa case, Valentine v. Independent School District, 183 N.W. 434 (Iowa 1921), the court ordered the school board to issue a diploma and a transcript of grades to a student, even though the student violated the board's rule to wear a cap and gown at graduation. The court said the student had met all requirements for graduation, except for wearing the cap and gown, and so the board had a legal duty to issue both diploma and grades.

What do these three cases tell us? Simply this: under the facts submitted to the court in the first two cases, the parents had a legal right of access to the records of their children. In one instance, the records were to be used in helping a child in need of psychological attention. In the other, they were to be used in a court case to help prove the child's condition before he suffered brain damage. In both cases it was the parent who wanted the records and not a third party--an out-sider. In the third case, the student was seeking part of his own records and the court held, in effect, that the important factor in receiving a diploma and grade transcript is meeting scholastic requirements, not wearing a cap and gown, so it required the board to release the transcript and grant the diploma.

I don't know about you, but the outcome of these cases does not offend me on either legal or ethical grounds. But I can imagine, and so can you, cases in which it would be unwise to release all records to parents. Let us take an extreme case.

Suppose that the records indicate that Johnny's troubles stem from his home environment--his father beats him. If this were released to the parent, Johnny would probably be beaten again!

What would happen if the parents demanded to see the records in this kind of case is speculative, legally. In New York, in light of the cases and the Commissioner's ruling, it seems as though the parents could gain access to the records. It is difficult to predict what might happen in Pennsylvania and other states.

Defamation

We now turn to the other side of the coin--what are the possibilities for the counselor's liability when he voluntarily releases records of information which may be defamatory? First, let me define "defamatory".

Any words tending to harm a person's reputation so as to lower him in the estimation of the community or to deter people from associating with him are "defamatory words".

Communication, oral or written, is called publication. If the words are spoken, they are called slander; if written, libel. A court action will not lie unless the slanderous words are of a certain nature. Written defamation, libel, is more easily redressed in the courts than spoken defamation. Libel is frequently actionable even though the same words, if spoken, would not be actionable without special damage; that is, when the words are written no injury to reputation need be proved. The mere publication of libel may be sufficient to maintain the action.

The words which historically were considered slanderous were: (1) those imputing the commission of certain crimes; (2) those imputing certain diseases and contagious disorders; (3) any imputation affecting a person's reputation for skill in his business, office, trade, profession, or occupation which tended to cause his position to be prejudicially affected. To these three classes of slander, another class has been added in modern times--words imputing unchastity to a woman. In these classes of defamation no special injury need be proved, the words are enough. If the defamation does not fall into one of these classes, special injury must be proved--the words are not enough.

Truth is a complete defense to any action unless the publication of the truth was purely malicious. Usually if the alleged slanderer can prove that the words were true he is not liable and his words are not, legally speaking, slanderous, for malice is difficult to prove.

The second main defense of the slanderer is that the communication was "privileged". You will recall that when I discussed "privilege" earlier I was speaking of its use to prevent the release of records on demand. Here the theory of privileged communication is used to defend a counselor who voluntarily released information.

There is, first of all, the absolute privilege of legislators and witnesses. These persons cannot be sued for anything they testify in court no matter how defiling it is so long as their utterances are made in connection with their official duties. They are given this absolute privilege so as to free them from restrictions and dangers of suit in the conduct of their official business. Absolute privilege rarely is available to counselors but a communication defaming a pupil may be qualifiedly privileged.

False words spoken by a counselor about one of his pupils would be actionable unless the slanderous words were communicated under privileged circumstances. One of the most important factors in determining whether a qualified privilege exists, is the relationship of the person hearing or reading the defamatory words to the person allegedly defamed.

A general rule has been recognized in a number of cases: that is that communications made by third persons in good faith on any subject matter in which the person communicating has an interest, or in reference to which he has a duty, is qualifiedly privileged if made to a person having a corresponding interest or duty, even though it is not a legal but only a moral or social duty.

There are limits to this rule. For example, the communication should not be made in front of others who do not have a corresponding duty. The privilege is strengthened if the communication is made in answer to a request of the relative.

A counselor's report to the principal or other school official would certainly be privileged under this rule, as would a communication to the student's parents or guardian. There would be no privilege, however, if a counselor slandered a student in the presence of other students, before the general public, to parents not involved in the situation, or to teachers not teaching or working with the student.

Counselors and teachers are frequently asked for letters of recommendation on former students. Such letters are considered confidential, and honest comments are sometimes encouraged by prospective employers that they may better judge the potential worth of an applicant for employment. Yet, dare a counselor write a derogatory letter without subjecting himself to suit for slander? If the letter expresses the counselor's honest opinion, reasonably based upon evidence which convinced the counselor of the truth of his estimate of the student and is not written with malicious intent to injure him, the communication under these circumstances is privileged, provided, of course, that the counselor does not show the letter to any other person, mails it to the prospective employer, and has no reason to know that anyone but the prospective employer will read it upon receipt. Communication of the contents by the employer after receipt of the letter may constitute slander on his part depending upon the circumstances, but does not reflect back to the counselor who wrote the letter unless he could have anticipated such publication.

Some Court Decisions

There are a few court decisions on defamation involving school employes. Here are three which illustrate the general principles. The school employe was not held liable in any of these cases.

In Iverson v. Frandsen, 237 F. (2d) 898 (Utah, 1956) (CA 10), a psychologist of a hospital wrote a report and filed it with the school on request of the school and according to usual practice. In the report he called the nine-year

old girl in question a "high-grade moron." The girl had come to the hospital with her mother. The psychologist was held not liable. The court ruled that the report was a professional one made by a public servant and that its contents were his best judgment of the situation. You should note that the report went to school officials with an interest in and responsibility to the child.

In Kenny v. Gurley, 95 So. 34, (Alabama 1923), a girl was sent home from school. In answer to a letter from her mother asking her return, the doctor and the dean of women wrote the parents that she could not return to school. The doctor stated that she had been in the school hospital with venereal disease and that she should be placed in the care of a physician. The doctor was evidently mistaken in his diagnosis. The dean's letter, which enclosed the doctor's, stated that his letter "explains itself," that "it seems to indicate that Velma has not been living right" and advising medical care and expressing sympathy. The girl sued both the doctor and dean of women. The court held the doctor and dean not liable, particularly since malice was not proved. The court noted that the defendants had a duty to the student body and when the school dismissed the girl, it was part of that duty to advise parents of the cause, especially in a public school maintained by public funds. The letters for this purpose were privileged communications, therefore not actionable even if the diagnosis were a mistake.

In a similiar case, Basket v. Crossfield, 228 S.W. 673 (Kentucky 1920), a male student was charged with indecent exposure and the university authorities communicated this fact to the parents. The court held that this communication to the parents was within the privilege, and no liability attached.

Counsel to the New York Commissioner of Education has ruled on this question of libel and slander. After the New York Commissioner of Education ruled that parents had the right to examine their children's school records, he requested a legal opinion on the possibility of libel suits as a result of the release of records to parents. The legal opinion stated in part:

"It is, therefore, my opinion that a carefully worded professional opinion rendered in line of duty by a physician, psychiatrist, psychologist, guidance counselor, principal or teacher, which is reasonably related to the educative process, made in good faith and with diligent regard for the rights of the person or persons involved, is protected by a qualified privileged against civil actions for damages based on libel. (Italics supplied.)

"Consequently, it would seem to me that such a law suit based on such a professional opinion against such persons would not be successful." (Formal Opinion of Counsel, No. 92, New York State Department of Education. Nov. 17, 1960.)

These cases, and the New York opinion, uphold the principle of the qualified privilege. In each case, the courts' views were that the school employe had a duty to the student, the school, and to the parents. In communicating to the parents, even though the communication might later be found false, the courts held the communication privileged.

Statutory Provisions

There are few statutes relating either to the confidentiality of student records or to a possible privileged relationship between counselor and student. But, I think it important to mention those for your general information and because you may be contemplating legislation.

(a) A California statute provides that cumulative records of pupils may be open to parents "during consultation with a certificated employe" of the school district. (West's Annotated California Codes, Education Code, sec. 10751-10752.)

(b) A New Jersey statute directs the state board of education to establish rules "governing the public inspection of pupil records" and the furnishing of other information relating to pupils and former pupils

of any school district. (New Jersey Statutes Annotated, sec. 18:2-4.1.) Under this directive statute, the New Jersey State Board of Education adopted rules providing that parents and guardians may inspect the records of the student if he is under age 21. After age 21, only the student may inspect his records. Even under this rule, the State Board provides that a board of education may refuse to release confidential information.

(c) A Montana statute provides that anyone teaching psychology or who is acting as a psychology teacher engaged in child study, shall not testify in a civil lawsuit as to any testimony obtained without the consent of the child's parent or guardian. (Montana Revised Codes Annotated, sec. 93-701--93-704.)

(d) A Michigan statute is of enough interest to quote in full: "No teacher, guidance officer, school executive or other professional person engaged in character building in the public schools or in any other educational institution, including any clerical worker of such schools and institutions, who maintains records of students' behavior or who has such records in his custody, or who receives in confidence communications from students or other juveniles, shall be allowed in any proceedings, civil or criminal, in any court of this state, to disclose any information obtained by him from such records of such communications; nor to produce such records or transcript thereof; except that any such testimony may be given, with the consent of the person so confiding or to whom such records relate, if such person is 21 years of age or over, or, if such person be a minor, with the consent of his or her parent or legal guardian." (Michigan Statutes Annotated, sec. 27A.2165.)

(e) On March 11, 1965, Indiana adopted a statute which reads: "Any counselor duly appointed or designated a counselor for the school system by its proper officers and for the purpose of counseling pupils in such school system shall be immune from disclosing any privileged or confidential communication made to such counselor as such by any such pupil herein referred to. Such matters shall be privileged and protected against disclosure."

Judicial Proceedings

I will turn now to a discussion of judicial proceedings which may involve counselors. There are several kinds of cases in which counselors may become involved and you may be surprised to learn that in many instances the cases are not school-related, although they do involve a student, or former student.

Let me mention a few types of cases. Where a student has been injured and is involved in a suit to recover for the injury, there is frequently a call upon the school and counselor for records on the student's health, behavior, achievement, and attendance records. Schools and school staff may be called upon to provide such information even though the injury is not school connected or the injury was incurred by a former student.

It is not unusual for guidance counselors and other school staff to be called upon to testify in child custody cases. Often one parent is endeavoring to show that, among other things, the child's schooling would be adversely affected if the other parent were granted custody.

In criminal cases, information about the school career of a defendant may be pertinent. Also the defendent's mental capacity may be an issue which requires information from the schools. Recently, courts have been permitting the use of "background data" on defendants, particularly in setting sentences or punishment. Such background data often includes school records of one kind or another.

These are the kinds of cases in which school personnel, including guidance counselors, may be called upon to give testimony.

At the outset, it should be clear that within certain limitations every person has the duty to give evidence in judicial proceedings or official proceedings and that courts have the power to require this testimony. This authority is exercised by subpoena, unless the witness appears voluntarily through arrangement with one of the persons involved in the proceedings. Subpoenas may require that the witness produce designated papers and records as well as himself.

I will not repeat the discussion of privilege I gave at the beginning of my remarks today, although much of that discussion is pertinent to judicial proceedings. Nor will I go into many of the legal technicalities of evidence admissibility, fees for witnesses, possible liability for not obeying a subpoena, and the like. There isn't time and I'm not sure it would be useful to you at this point. What I <u>do</u> want to emphasize is that you, as a possible witness, need not know all of these technicalities. And, I want to give you some suggestions which are practical and would be, I hope, helpful to you if you must or choose to appear as a witness.

Probably the first problem you will encounter, particularly if you are teaching even a few classes, is the time involved. The subpoena will state the time and place of appearance and usually give the name and address of the attorney for the party in whose behalf the witness is called. It is usually possible to arrange with the attorney to be "on call" at short notice. If this can be done, you can save a lot of time and inconvenience.

Once in court, it should be remembered that judges have some discretion to exclude evidence if its probative value is outweighed by the risk that it may, among other things, unnecessarily do harm.

If a guidance counselor believes that there is a risk in testifying about certain of his knowledge about a student or submitting all of a student's record

into evidence, he should not hesitate to arrange a conference with the trial judge to explain the situation.

For example, a private notation by a teacher or counselor that "this girl will steal everything in sight" would hardly be relevant in a case where a sight or hearing impairment which the plaintiff had in school is the issue because it is claimed to be the result of an accident many years after.

Sometimes conferences with the judge can be arranged in advance of the proceedings to determine what parts of the school records may be disclosed, and what parts may be kept confidential.

Also, conferences with the attorneys involved are not improper, no matter which side has issued the subpoena. The counselor should enlist the attorneys' cooperation to avoid undesirable and purposeless exposure of private information in court.

The last thing I wish to mention in relation to judicial proceedings is the question of liability on the part of the counselor who testifies. A witness in a judicial proceeding has "absolute immunity" from liability for his testimony in judicial proceedings. This immunity extends even to false testimony. The obvious reason for granting absolute immunity from liability to witnesses is to encourage them to speak freely, which is indispensable to the administration of justice.

One limitation on this absolute immunity rule has been noted in several jurisdictions. That is, put simply, that the immunity rule covers only relevant testimony. But even under this view, it must be noted that the witness need not decide at his own risk what is relevant. The purpose of the relevancy limitation is to deter witnesses from abusing the immunity rule; thus most courts would have to find malice as the reason for the testimony to impose liability for it.

The witness who may be concerned about the relevancy question should discuss it with the judge.

The one thing I have tried to make clear in discussing testimony in judicial proceedings is that the witness--the counselor--can discuss his problems of confidentiality, relevance, and possible harm to the student with the judge and often with counsel. If in doubt, he should do so.

Conclusion

In concluding, I think some suggestions for practice might be of value to you.

1. Remember the importance of truth; don't deal in rumors or gossip.
2. Remember that the privilege is more likely to be qualified if you are communicating with the child's teachers, principals, supervisors, parents or guardians--individuals with an interest in or duty to the child.
3. Be very careful in discussing matters over the telephone. If an employer is seeking a recommendation, have him ask for information on his stationery so that you may reply in writing and have the copies of both his request and your reply. (Some people think it might be better not to put it in writing. If you think so, at least be certain to whom you are speaking.)
4. Don't volunteer recommendations to prospective employers. You are on much sounder ground if you have a request for the recommendations. This helps to rule out malice.
5. When releasing possible injurious information and records to other teachers and administrators, be certain that the information is released in order to help the student, or to help you solve the problem of dealing with the student. Remember that you can talk to others generally about the problem and get their advice without revealing the name of the student.

6. Remember that not many teachers or counselors are sued for defamation. This is no reason to be lax in your use of possible damaging information, but also you should not fear a possible lawsuit so much that you fail to do your job properly.

7. Remember that judges, and even some lawyers are reasonable individuals! If you are in doubt over what to release in a judicial proceeding, don't hesitate to arrange a conference with the judge (or the attorneys, if appropriate) to explain your dilemma and get advice on how to proceed.

Having said all these words to you, and discussed the few cases and the statutes, I haven't said the most important thing.

This is simply that you have little to fear from the law if you perform in a professional and ethical manner. And, by professional and ethical, I do not mean angelic nor perfect. The standards expected of a professional, legal or otherwise, are higher than those set for others. They should be. But if you perform reasonably, and without malice, in your efforts to meet your professional standards, I believe you will find the law and the courts your friends, not your adversaries.

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AUDIO TAPE AVAILABILITY

The Altoona Area School District and the Division of Guidance Services have cooperated in preparing audio tapes of the three speeches, the six group sessions, the reaction session, and the guidelines and policy statement development session. Groups desiring to use these tapes in in-service training, counselor education classes, or other types of meetings devoted to this area of counselor concern should contact: Audio-Video Duplication Center, Department of Public Instruction, Box 911, Harrisburg, Pa. 17126.