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# **ETHICS AND LAW FOR SCHOOL PSYCHOLOGISTS**

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## Chapter 7

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# **ETHICAL AND LEGAL ISSUES IN COUNSELING AND THERAPEUTIC INTERVENTIONS IN THE SCHOOLS**

Based on a survey of members of the National Association of School Psychologists, Curtis, Hunley, Walker, and Baker (1999) reported that 86 percent of school practitioners engage in counseling of individual students, and about 53 percent conduct student group sessions. This chapter explores the ethical-legal issues associated with counseling and therapeutic interventions with individual students (see Corey, Corey, and Callanan, 1998, for information on the ethical-legal aspects of counseling students in groups). It begins with a discussion of pre-intervention responsibilities to the parent and pupil and intervention planning. The responsibilities of the school psychologist in situations involving danger to the student or others are addressed, followed by an overview of the legal issues associated with pregnancy and birth control counseling. Ethical-legal issues associated with behavioral interventions in the schools are then examined. We conclude with a brief discussion of issues associated with psychopharmacologic therapies in the school setting, using Ritalin as an example.

### **PRE-INTERVENTION RESPONSIBILITIES**

School psychologists have a number of ethical and legal obligations to pupils and their parents prior to providing psychological treatment services.

#### **Parent Involvement and Consent**

As noted in Chapter 3, ethical codes, professional guidelines, and law are consistent in requiring parent consent (or the consent of an adult student) for school actions that may result in a significant intrusion on personal or family privacy beyond what might be expected in the course of ordinary classroom and school activities (Corrao & Melton, 1988). It is, however, generally viewed as permissible to provide emergency counseling without

parent notice or consent in the event of a crisis situation in the schools (Canadian Psychological Association, 2000; NASP-PPE-III,C,#2; Pitcher & Poland, 1992). Consequently, with the exception of unusual situations, informed consent is obtained prior to the provision of psychological treatment. Bersoff and Hofer (1990) note that parental consent is implied for psychological interventions written in the child's individualized education program (IEP) under IDEA, but the psychologist may want, at times, to secure continued parental consent, particularly if the intervention changes over the course of treatment.

The provision of direct services to a minor child (e.g., the psychologist works with a child in overcoming a phobia) clearly requires parental consent. The situation is less clear-cut when the psychologist serves as a consultant to the teacher and the teacher serves as the behavior-change agent. DeMers and Bersoff (1985) suggest that parental consent probably is needed and desired if the focus of the consultation is a specific child, rather than the classroom, and the child may be treated differently from others as a result of the consultation to the teacher (also Reschly & Bersoff, 1999).

### **Responsibilities to the Pupil**

Legally, in the school setting, informed consent for psychological services rests with the parents of a minor child. However, the practitioner is obligated ethically to respect the dignity, autonomy, and self-determination of the student/client. The decision to allow a student/client the opportunity to choose (or refuse) psychological treatment or intervention may involve consideration of a number of factors, including law, ethical issues (self-determination versus welfare of the client), the pupil's competence to make choices, and the likely consequences of affording choices (e.g., enhanced treatment outcomes versus choice to refuse treatment). We concur with Weithorn's (1983) suggestion that practitioners permit and encourage student/client involvement in treatment decision making to the maximum extent appropriate to the child and the situation.

Practitioners have an ethical obligation to inform the student/client of the scope and nature of the proposed intervention, whether they are given a choice about participating (NASP-PPE, III, B,#2). After children reach school age, the initial interview with the pupil also should include a discussion of the parameters of confidentiality.

### **Special Informed Consent Issues**

Special informed consent issues include self-referrals for counseling, consent to experimental methods of treatment, and supervision and consultation release.

### ***Self-Referrals for Counseling***

Young children are unlikely to seek help or initiate a counseling relationship on their own. However, at the high school level, many referrals for counseling are self-referrals. Students may wish to see a school psychologist on the condition that their parents not be notified. This raises the question of whether students who are minors can ever be seen by the school psychologist for counseling without parental permission. We are not aware of any case law decisions that specifically address this question.

A reasonable, common sense approach to the issue of counseling minor students without parental consent was suggested by C. Osip in Canter (1989). Osip suggests allowing students one precounseling screening session without parental permission. This precounseling meeting could serve to ensure that the child is safe and not in danger. During this meeting, the psychologist could discuss the need for parental consent for further counseling sessions, offer to contact the parent on behalf of the student, or offer to meet jointly with the student and parents to discuss consent and ensure ongoing parent support. Unless there is a conflict with state law, we believe school districts should adopt written policies stating that students may be seen by the school psychologist or other mental health professional without parent notice or consent to ensure the student is not in danger (e.g., child abuse, suicidal), or if it is suspected the student may be a danger to others.

Practitioners should be aware that in some states, minors are given the right to access certain types of treatment independent of parental notice or consent under state law. However, these rights to access treatment usually are limited to conditions of a medical nature (e.g., drug abuse, venereal disease) and may not extend to the school setting. School psychologists need to consult their state laws to determine whether minors are given rights to seek treatment independent of parental notice or consent in their state, and under what conditions (Corrao & Melton, 1988).

### ***Experimental Methods***

In seeking informed consent for treatment, all experimental methods of treatment must be clearly indicated to prospective recipients (EP 10.01). Experimental methods of treatment may be either methods that are non-standard practice in the profession, whose efficacy has not been established, or those that are new to the repertoire of the individual psychologist.

### ***Supervision and Consultation Release***

School psychologists, interns, and practicum students need to inform parents (and adult students) at the onset of the provision of services if they

will be discussing information about their case with a supervisor or consultant (EP 10.01). As will be seen in Chapter 11, parents and adult students should be given the opportunity to make an informed choice whether to accept treatment services from a school psychology trainee. When treatment services are provided by a trainee, parents and adult students should be provided the name and phone number of the trainee's supervisor (Knapp & VandeCreek, 1997).

### **Planning Interventions**

In recommending psychotherapeutic interventions, psychologists strive to propose a "set of options" for consideration by the student and others involved in intervention decision making (NASP-PPE, III, C, #1, #5). The proposed options should consider all resources (school and community) available to assist the student and family and take into account the objectives of the school and the classroom, the support and assistance that can be made available to the teacher, and the values and capabilities of the parents (NASP-PPE, III, C, #1, #3, #5). School psychologists "respect the wishes of parents who object to school psychological services and attempt to guide parents to alternative community resources (NASP-PPE, III, C, #4).

Psychologists also are obligated to recommend evidence-based intervention techniques, that is, those techniques "that the profession considers to be responsible, research-based practice" (NASP-PPE, I, C, #4; also EP 2.04). Consequently, they must keep abreast of the research literature on intervention strategies and their effectiveness.

### **Interventions with Culturally Diverse Clientele**

Practitioners are obligated ethically to ensure that services are beneficial and respectful of the student-client. Consequently, practitioners have special obligations when working with students whose background characteristics are different from their own. First, psychologists need to be aware of how their own cultural heritage, gender, class, ethnic-racial identity, sexual orientation, and age cohort shape personal values and beliefs, including assumptions and biases related to those who are different (Hansen, Pepitone-Arreola-Rockwell, & Greene, 2000; Rogers et al., 1999). Second, psychologists need to learn about the student-client's background, values, beliefs, and worldview and how those cultural and experiential factors may influence development and behavior (Hansen et al., 1999; Lynch & Hanson, 1998; Ortiz & Flanagan, 2002). Third, in order to provide sensitive and effective services, practitioners must be able to demonstrate an understanding and respect for cultural and experiential differences in

interacting with the student (APA, 1993; Hansen et al., 1999; Rogers et al., 1999; Lynch & Hanson, 1998). Fourth, practitioners are obligated to seek knowledge of best practices in selecting, designing, and implementing treatment plans for diverse clientele with learning or behavior problems (APA, 1993; Hansen et al., 1999; Rogers et al., 1999). And fifth, when working with diverse students, practitioners should assist the students and their parents to better understand the culture of the school and community so that they can make informed choices relevant to schooling and mental health services (Hays, 2001; Rogers et al., 1999).

Practitioners also are obligated to self-assess their own multicultural competence (Hansen et al., 1999). More specifically, they need to consider when circumstances (e.g., personal biases, lack of requisite knowledge, skills, or language fluency) may negatively influence professional practice and adapt accordingly; that is, by obtaining needed information, consultation, or supervision, or referring the student to a better qualified professional (APA, 1993; Hansen et al., 1999). (See Case 7–8 in this chapter and Appendix D.)

## COUNSELING: ETHICAL AND LEGAL ISSUES

Tharinger and Stafford (1995) describe counseling in the schools as a process of ongoing, planned interactions between a student/client and a mental health professional. The school psychologist works to alleviate the student/client's distress by improving the child's psychological functioning and/or facilitating change in his or her environment, in particular the school and family systems. More specifically, the goals of counseling may include "alleviating the child's emotional and cognitive distress, changing the child's behavior, assisting with self-understanding, helping the child meet current developmental tasks successfully, supporting needed environmental changes, and promoting a more positive fit between the child and the systems in which she or he resides (e.g., school and family)" (p. 896).

In the next portion of the chapter, we explore ethical-legal issues in special counseling situations, such as working with students who are potentially dangerous to others or a threat to themselves. In responding to such situations, it is important for school psychologists to recognize that they are viewed differently in law than psychologists who work in non-school settings such as private practice. As noted in Chapter 2, school practitioners have a legal as well as a moral obligation to take reasonable steps to protect students from foreseeable harm. This obligation extends to all students, not just their own clients. Also, because many of the students they work with are minors, school practitioners must place a high priority on parent involvement.

**Case 7-1**

An 8-year-old girl, Celia, complained to her teacher that another child (a 13-year-old boy) was "playing games" with her. As it was apparent that the games involved inappropriate sexual contact, the teacher informed the school psychologist. The school psychologist counseled Celia without notifying her mother of the problem. The school principal was informed of the incidents and told the boy involved not to "bother" Celia any more. The principal also failed to notify Celia's mother about the incidents. Meanwhile, the assaults on Celia continued over a 3-month period, both on school premises and en route to school. Celia became increasingly despondent and withdrawn. The sexual assaults ultimately led to rape. The victim's mother, after learning what had happened, filed a lawsuit against the school psychologist, teacher, and principal.

The California Supreme Court ruled that the school had a mandatory duty to warn Celia's mother that her daughter was being sexually molested, a duty to report the assaults to a child protective agency, a duty to obtain written parent consent prior to psychological treatment dealing with matters of a sensitive sexual nature, and a duty to properly supervise the molesting student and ensure Celia's safety (adapted from *Phillis P. v. Claremont Unified School District*, 1986).

**Threat to Others**

Schools are one of the safest places for children (Mulvey & Cauffman, 2001). However, violence in our schools is a concern of educators and parents. During the 1996-1997 school year, approximately 187,890 students were physically attacked or in a fight without a weapon; an additional 10,950 were attacked or in a fight involving a weapon (National Center for Education Statistics, 2001). Our focus here is on assessment of whether an individual student poses a danger to others; school-wide programs to identify students who may be at risk for violent acts are discussed in Chapter 9.

As noted previously, under state statutory law and case law, school personnel have a legal duty to protect pupils in their schools from reasonably foreseeable risk of harm. Also, in many states, therapists have a legal duty to take reasonable steps to prevent anticipated harm when their client is a danger to others (e.g., *Tarasoff v. Regents of California*, 1976). The assessment of whether a student poses a danger to others is not an easy task.



School personnel may become concerned about a student because of his or her aggressive, antisocial behavior (e.g., fighting, explosive temper). For such students, the task is to determine the risk for future violent acts and how to reduce the likelihood of future violence. Borum (2000) has provided guidelines regarding how to conduct a systematic assessment of violence potential in such situations. His approach takes into account the student's past violent acts, the precipitants to those acts, and the protective factors, that is—factors that would help the student avoid situations likely to trigger violent actions.

Students also may come to the attention of the school psychologist or other school personnel because they make direct or indirect threats to injure others. The term *targeted violence* is used to refer to situations in which both the potential perpetrator and target(s) are identifiable prior to a violent attack (Vossekuil, Reddy, Fein, Borum, & Modzeleski, 2000). As Borum (2000) notes, a different assessment approach is recommended in situations involving targeted violence.

When students make threats to injure others, such threats should be taken seriously (Reddy, Borum, Vossekuil, Fein, Berglund, & Modzeleski, 2001; *Mirand v. Board of Education of the City of New York*, 1994). A report sponsored by The Federal Bureau of Investigation recommends a multidisciplinary team approach to threat assessment (FBI Academy, 2000). This team might include mental health professionals, school administrators, and law enforcement professionals. In *Milligan et al. v. City of Slidell* (2000), a federal court ruled that it is permissible for school officials and police to detain and question a student thought to be planning an act of violence at school because the school's interest in deterring school violence outweighs a student's limited Fourth Amendment privacy rights in such situations.

The risk factors for targeted violence do not appear to be the same as the risk factors associated with general aggression and violence recidivism among youth (Reddy et al., 2001). Reddy et al. (2001) have outlined a model for evaluating whether a student is on a path toward targeted violence. Their model is based on three principles: (1) targeted violence is a result of an interaction among the student, situation, target, and setting; there is no single "type" of student prone to such acts; (2) evaluators must make a distinction between a student who makes threats vs. poses a threat; and (3) targeted violence is often the product of an understandable pattern of thinking and behavior. The model involves evaluating the student's behavior and pattern of conduct using information from multiple sources. Information gathering might involve interviewing the student, his or her family, teachers, and friends; and reviewing pupil records. Key questions that guide the threat assessment evaluation include the following: Does the student have ideas about or plans for targeted violence? Has the student shown an interest in violence, acts of violence by others, or weapons?

Has the student engaged in any attack-related behavior, including menacing, harassing, or stalking? Is the student cognitively and physically capable of carrying out a plan of violence? Has the student experienced a recent loss or loss of status and has this led to feelings of desperation and despair? And, what factors in the student's life and/or environment might increase or decrease the likelihood of the student becoming violent? (also see Borum, Fein, Vossekuil, & Berglund, 1999).

In making a decision whether a student is potentially dangerous, the psychologist is well advised to consult with other professionals (Waldo & Malley, 1992). In court decisions, therapists have not been held liable for failure to warn "when the propensity toward violence is unknown or would be unknown by other psychotherapists using ordinary skill" (Knapp & VandeCreek, 1982, p. 515).

Consistent with the guidelines for other situations involving danger, schools need to develop written procedures regarding when and how to notify school officials and legal authorities (e.g., police, the student's probation officer) if school staff become aware of a potentially assaultive student. These procedures should ensure that the intended victim is warned (see Case 7-1). If a student poses a threat to a minor child, the parents of the threatened child should be notified. Parents of a potentially assaultive student should be informed of the situation. The potentially violent student should be supervised in the school setting and at home, and steps should be taken to ensure there is no access to weapons. Mental health practitioners should be prepared to refer the family to a community mental health agency and be familiar with the procedures for voluntary or involuntary commitment of minors and adult students. Psychology practitioners should know and follow school policies regarding dangerous students and should document their actions in the management of a student who may become violent (Pitcher & Poland, 1992).

Practitioners also need to consider the long-range needs of students at risk for violence with regards to follow-up educational and mental health services. They need to ensure that the student receives well-coordinated assistance from the family, school, and community mental health professionals.

As is true of many mental health concerns in the school setting, efforts aimed at preventing student violence on a systemwide basis are preferable to the dilemmas of managing the assault-prone student. There appears to be a growing body of literature on this topic (see Brock, Lazarus, & Jimerson, 2002; also Chapter 9).

### **Threat to Self**

Suicide is one of the three leading causes of death among adolescents (Center for Disease Control, 2001a). It is estimated that in 1997 there

were approximately 9.5 completed suicides per 100,000 adolescents in the 15–19-year-old age group and 1.6 per 100,000 children in the 10–14-year-old age group (National Institute of Mental Health, 2001).

#### **Case 7–2**

*Brian, a 14-year-old, confronted his teacher during class with a .38 caliber revolver. The teacher persuaded Brian to talk with the vice principal alone in an empty classroom. Brian showed the vice principal a suicide note he had written and asked to speak with his favorite teacher; he was not allowed to do so. When they left the classroom, Brian was confronted by a police officer who told him he was “in trouble with the law.” Brian (still armed with the gun) entered the boy’s restroom where he shot himself. Brian died later that morning (adapted from Kelson v. The City of Springfield, 1985).*

#### **Case 7–3**

*“Nina,” a 13-year-old middle-school student, became involved in Satanism and developed an obsessive interest in death. She told several friends that she intended to kill herself. Nina’s friends reported her suicidal intentions to their school counselor (at a different school), who conveyed the information to Nina’s school counselor. Both counselors met with Nina and questioned her about her statements concerning suicide, but she denied making them. Neither counselor informed Nina’s parents or other members of the school staff about her suicidal statements. One week after telling her friends about her suicidal intentions, Nina and another 13-year-old girl consummated a murder-suicide pact in a public park some distance from the middle school she attended (adapted from Eisel v. Board of Education, 1991).*

### **School Response to Suicidal Intent**

In *Kelson* (Case 7–2), Brian’s parents filed a negligence suit against the school and city in state court and a Section 1983 lawsuit against the school and city in federal court, alleging that the state interfered with their constitutionally protected liberty interest in the companionship of their son.

When the Section 1983 lawsuit reached the U.S. Court of Appeals, the judge advised Brian's parents to file an amended claim against the school district after ruling on several legal questions raised by the case. In so doing, he raised the question of a possible relationship between school policy (namely, inadequate suicide training for its staff) and Brian's death.

In *Eisel v. Board of Education* (Case 7-3), Nina's father filed a negligence suit against the two school counselors, based on their failure to communicate information to him concerning Nina's contemplated suicide. Nina's father believed he could have prevented his daughter's death had he been told about her statements. The court held that a school has a special duty to protect a pupil from harm and that "school counselors have a duty to use reasonable means to attempt to prevent a suicide when they are on notice of a child or adolescent's suicidal intent" (*Eisel*, 1991, p. 456). The school counselors were viewed as having little discretion regarding whether to contact parents once information suggested a potential suicide.<sup>1</sup>

The *Eisel* and *Kelson* cases, among others (e.g., *Wyke v. Polk County School Board*, 1997), have been interpreted to suggest that schools should develop clear suicide prevention policies and procedures that include notifying parents and ensure adequate staff orientation to district policy and procedures. When it is suspected that a student is suicidal, the situation should be reported to the building principal and a designated staff member who has training in assessment of suicide lethality and suicide prevention. The school psychologist might serve as one of the designated staff members. The student should be assessed for the lethality of suicidal ideation because the degree of lethality determines the appropriate course of action (Poland, 1989). Most methods of assessing lethality involve seeking answers to a series of critical questions such as, Is there a preoccupation with death? Does the student have a suicide plan? Has the student made previous suicide attempts? Is the student involved with drugs? Has there been a precipitating event? And, why does the student want to die? (See Poland & Lieberman, 2002.)

Practitioners are not expected to be able to predict suicide attempts with perfect accuracy (Knapp, 1980), but they are expected to apply "skill and care in assessing suicidal potential and . . . a reasonable degree of care and skill in preventing the suicide" (1980, p. 609). Many psychologists recommend asking suicidal clients to sign a "no-suicide contract." Although "do no harm" contracts may be clinically useful, it is important to recognize that such contracts do not substitute for a careful risk assessment and appropriate intervention based on the assessed risk (Simon, 1999).

Parents must be contacted in all cases, whether the risk is determined to be low or high. As Poland (1989) notes, the question is not whether to

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<sup>1</sup> This decision did not determine the school's liability; the decision only allowed action in another court to rule on the school's liability. The school counselors ultimately were not held liable for the \$1 million in damages the father sought.

tell the parents, but how to elicit a supportive reaction from them. Parents of medium- or high-risk students should be contacted as soon as possible. The high-risk student should not be left alone, and his or her parents should be required to come to school for a conference and to pick up their child (Poland, 1989).

Poland (1989) recommends that two staff members conduct the parent notification conference and notes that some districts have parents sign a form acknowledging that they have been notified their child is suicidal. The psychologist needs to ensure that parents understand the seriousness of the situation, and parents should be advised to increase supervision at home and remove access to weapons and other means of self-harm (e.g., medications). The practitioner should be prepared to refer the family to a community mental health professional who has expertise in working with suicidal youth. Poland (1989) provides a number of recommendations for eliciting a supportive response from the parents. However, if parents are unwilling to follow through on treatment recommendations, Poland suggests it is appropriate to warn them that failure to seek assistance for their child is neglectful, and child protective services will be contacted.

Practitioners also need to consider the long-range needs of the suicidal student with regards to follow-up educational and mental health services. School personnel who work directly with a suicidal student should be informed so that they can provide adequate supervision (Poland, 1989).

Practitioners are well-advised to develop consultative relationships with clinicians who have expertise in suicide assessment and management whom they can contact for assistance in evaluating and managing a potential suicide situation (Jobes & Berman, 1993). Practitioners should document their actions regarding risk assessment and management of pupils who may be suicidal. They need to be familiar with community resources for referral, including the procedures for hospitalization of suicidal minors and adult students.

It has become increasingly important for school practitioners to obtain training to develop their professional competence in assessment and management of suicidal clients (Jobes & Berman, 1993). Additionally, psychologists who acquire special expertise in suicide prevention can play an important role in the development of the school's planned response to suicidal students. There is a growing body of literature on the development of suicide prevention programs (see Brock et al., 2002; Poland & McCormick, 1999).

### **Substance Abuse**

A number of surveys suggest that substance abuse continues to be a problem in our schools. Alcohol is the substance most commonly abused by teenagers. In 2000, 52 percent of eighth graders, 71 percent of tenth graders, and 89 percent of twelfth graders reported having consumed

alcohol within the year. In the same year, 27 percent of eighth graders, 46 percent of tenth graders, and 54 percent of twelfth graders reported using illicit drugs (National Institute on Drug Abuse, 2001). School psychologists (particularly those who work with middle and senior high students) need to be knowledgeable of drugs commonly used by adolescents and the symptoms of alcohol and drug abuse.

When substance abuse poses a threat to the student, it is appropriate to notify the parent of the problem and work with the parent in locating treatment resources (Forman & Randolph, 1987). Some states (e.g., Virginia) have enacted laws that require schools to report alcohol or substance abuse to parents. If the parent is uncooperative, the psychologist should explore treatment options that do not require parental consent. Every state has an agency responsible for coordinating substance abuse services that may be helpful in locating needed services (Forman & Randolph, 1987).

If knowledge of substance abuse involves other students in the school setting, the practitioner may need to discuss the situation with appropriate school authorities in order to ensure the safety of others. School psychologists must be cautious to avoid involvement in school disciplinary actions such as search and seizure, particularly if such activities are not part of their formal job responsibilities (see Chapter 2).

#### Case 7-4

*Nick Greene, a member of the school's winning football team, made an appointment with the school psychologist, Sam Foster. He confided that he had been taking "supervitamins" to build up his muscles over the past year. A fellow high school student bought the vitamins at a local health club and sold them in the locker room to football team members. Nick had seen some TV news stories about steroids, and he thinks maybe the supervitamins "have some of that in it." He was worried because he also heard that steroids "could make a guy act queer," and he wanted to know if that could happen to him.*

Sam Foster (Case 7-4) needs to work with Nick and his parents to ensure that Nick is seen by a physician to determine the nature of the substance taken, any harmful effects, and the appropriate course of treatment. He also needs to discuss his concerns about possible steroid abuse with high school officials (without disclosing Nick's identity) and explore ways to alert parents and students to the dangers of steroid use.

School psychologists can assume a leadership role in the development and implementation of school-based substance abuse programs, including

educational programs for school staff and parents, prevention and intervention programs for students, and developing liaisons with community resources (see Cavell, Ennett, & Meehan, 2001).

### Child Abuse

The Child Abuse Prevention, Adoption, and Family Services Act of 1988 defined child maltreatment as “the physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child by a person who is responsible for the child’s welfare, under circumstances which indicate that the child’s health or welfare is harmed or threatened” (Pub. L. No. 100–294, § 14). States are required to use a similar definition of abuse in their reporting laws in order to be eligible for federal child protection funds. There is some variation among states, however, with regard to the way abuse is defined (see Kalichman, 1999). All 50 states have enacted legislation requiring school professionals to report suspected cases of child abuse to child welfare or protection agencies.

There were 2,822,829 investigations by Child Protective Services in 1999. An estimated 826,000 children were victims of child abuse or neglect that year (U. S. Department of Health and Human Services, 2001a). Most child abuse goes unreported, however. Researchers estimate that reported cases of child abuse constitute only about 40 percent of all cases (Kalichman, 1999).

#### Case 7-5

*Pesce was a school psychologist providing services at the high school level. A female student (C. R.) gave him a note written to her by a male friend (J. D). The note included a statement made by J. D. expressing guilt and confusion about his sexual preference and possible hints of suicide. C. R. also informed Pesce that J. D. had visited the home of a male teacher where “something sexual” had occurred between them. Pesce urged C. R. to have J. D. get in touch with him to discuss these matters. Pesce did not notify anyone else of C. R.’s communications at that time.*

*Later the same day, J. D. visited Pesce in his office at school, and Pesce assured J. D. of the confidentiality of any information divulged and questioned him about issues raised by the letter. J. D. denied having any current suicidal intentions and denied that any sexual acts had occurred between the male teacher and him but stated that the teacher had once shown him “pictures” when he*

**Case 7-5** (Continued)

visited the teacher's home. J. D. also expressed a desire to have help in addressing his confusion over sexual preference. Pesce arranged for J. D. to see a therapist.

Pesce reached a professional judgment that it was in J. D.'s best interest for Pesce to honor their confidential relationship and not inform school authorities about J. D.'s communications without his consent. After considering relevant state laws, school regulations, the guidelines of the American Psychological Association, and consulting with an attorney and a colleague, Pesce chose not to notify a child protection agency or any school officials of the rumored sexual activity or suicidal tendencies.

During the following week, J. D. kept two appointments with the therapist Pesce had recommended but canceled a third. Pesce then met jointly with J. D. and the therapist. During that meeting, J. D. revealed that he and the male teacher had engaged in a sexual act. J. D. then agreed with Pesce that it would be best to reveal the information to school authorities. Pesce promptly did so.

After making his report to school officials, Pesce was given a five-day disciplinary suspension for "failure promptly to report J. D.'s possible suicidal tendencies and the alleged sexual misconduct of a male teacher" (p. 790).

Pesce filed a suit against school officials alleging (among other claims) that the state's requirement for reporting suspected child abuse infringed unconstitutionally on his right of confidentiality in the professional relationship (derived from the student's right to privacy). The court noted that, as a school psychologist, Pesce may well be able to claim a right to confidentiality in his professional relationships with his clients. However, even if there is such a right to confidentiality, there is a greater compelling interest, namely to protect children from abuse. The court found that "the Illinois requirement that Pesce and others in similar positions of responsibility promptly report child abuse to a state agency does not unconstitutionally infringe on any federal right of confidentiality" (p. 798) (adapted from *Pesce v. J. Sterling Morton High School District 201, Cook County, Illinois, 1987*).

School psychologists legally are required to report all cases of suspected child abuse. All states provide immunity from civil or criminal action for making such a report, as long as it is made in good faith. Penalties for not reporting may include civil liability and loss of certifi-



cation or license. In *State v. Gover* (1989), the court held that it is not necessary that school personnel be certain that the abuse took place, only that there is reason to suspect abuse. In *Phillis P.* (Case 7-1), the California Supreme Court held that the school psychologist had a mandatory duty to report a student who was sexually molesting another student to the state child protection agency. In *Pesce* (Case 7-5), the court held that the duty to protect schoolchildren by reporting suspected child abuse outweighs any right to confidentiality of the psychologist-client relationship.<sup>2</sup>

School psychology practitioners must be familiar with the signs of abuse and neglect. They must know the procedures for reporting and familiarize themselves with the designated agency and its procedures for handling reports (see Horton & Cruise, 2001). It is the responsibility of the child protection agency, not school personnel, to confirm or disconfirm the existence of abuse or neglect.

Most child abuse occurs in the context of the family, rather than the school. One concern about making a report about suspected abuse might be the loss of rapport with the student or with the family as a result of making a report. However, based on a review of the available studies, Kalichman concludes that "... little evidence exists to support the popular perceptions that reporting abuse has detrimental effects on the quality and efficacy of professional services. In fact, studies specifically addressing these issues in clinical settings find that reporting sometimes benefits the treatment process" (1999, p. 61). He goes on to note, however, that additional research is needed in this area. Similarly, Meddin and Rosen note that, "After their initial and appropriate anger at the intervention of the agency, most parents feel a sense of relief that the problems has [sic] been identified, and they are usually very willing to work toward a solution" (1986, p. 30).

School psychologists can assume an important role in the prevention, identification, and reporting of child abuse and in the treatment of abused children (see Horton & Cruise, 2001; Kalichman, 1999).

### **Pregnancy and Birth Control Information**

In the following paragraphs we provide a brief overview of the legal issues associated with student pregnancy and birth control counseling.

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<sup>2</sup> The case of *Pesce* is a curious one for a number of reasons. First, no mention is made of parent involvement. Second, school officials also failed to notify protective services after *Pesce* notified them of his concerns. The reader may wish to consider alternative decisions that might be made in handling a situation like the one that confronted *Pesce* and the possible consequences of various actions for the parties involved.