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COMMITTEE REPORT

SENATE

4/16/81

FURTHER: JUDICIARY

Date: 4-12-82

Mr. President:

The Committee on HEALTH, EDUCATION & SOCIAL SERVICES has had SB 437 relating to confidential communications between students and teachers

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s) same title
- replace with CS for _____ new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Handwritten signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Handwritten signature]

[Handwritten signature]

 CHAIRMAN

SENATE AMENDMENT

By Senate Health, Education, and Social Serv. Comm.

To: _____ SENATE BILL No. 437

To: _____ HOUSE BILL No. _____

PAGE: 2 LINE: 12 & 13

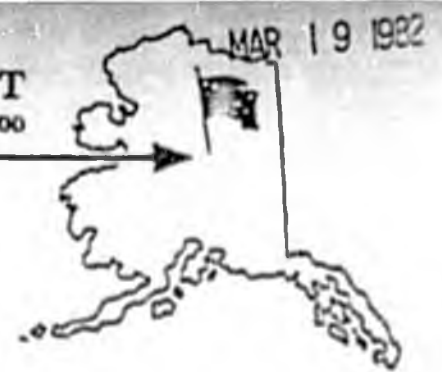
Delete the following portion of Lines 12 & 13:

working in a public school in the state!

FAIRBANKS NORTH STAR BOROUGH SCHOOL DISTRICT

P.O. Box 1250, Fairbanks, Alaska 99707-1250

(907) 452-2000



KENNETH STEPHEN BURNLEY

Superintendent of Schools

March 16, 1982

Senator Terry Stimson
Pouch V
Juneau, Alaska 99811

Dear Terry,

There has been a very vocal group of parents in Fairbanks who have been concerned that their elementary school aged children will be influenced away from family beliefs. Their main concerns have involved the elementary counseling program; however, their concerns have included teachers as well. It became such a public issue in Fairbanks that Fairbanks area legislators may be concerned about the political implications of this legislation at this time. There was no concern in the junior and senior high area. As child abuse is already a mandated non-confidential area you may want to consider addressing your legislation to age twelve and above.

As a professional counselor I support this legislation and am sharing the above information out of concern for your bills' success.

Sincerely,

A handwritten signature in cursive script that reads "Paula Esch".

Paula Esch, District-Wide Counselor

PE/bq

KENAI JUNIOR HIGH SCHOOL

A part of KENAI PENINSULA BOROUGH SCHOOL DISTRICT
KENAI, ALASKA 99611

file

March 23, 1982

Senator Terry Stinson
Alaska State Senate
Pouch F
Juneau, Alaska 99811

Dear Senator Stinson:

I have read your bill SB 437, and am very much in favor of it. I have also written to Senator Parr asking for his support.

Will appreciate your support of JS 111 and/or KI 698.

Thank you.

Sincerely,



John Pierson
Counselor

file
MAR 17 1982

P. O. BOX 179 SITKA, ALASKA 99835
March 15, 1982

Louis J. Licari
Acting Superintendent

Terry Stinson
State Senator
Pouch V
Juneau, AK 99811

Dear Senator Stinson:

Thank you for the copy of Senate Bill No. 437. We are sorry that you were not able to be present at our last Alaska School Counselor's Association board meeting to discuss it with us.

The counselors with whom I have conferred all seem to be in strong agreement with this bill, and we certainly lend you our full support.

The only suggestion I would offer is that Section 09.25.320, DEFINITION, a "teacher" be amended to include not only public school teachers, but private or parochial school teachers as well.

Sincerely yours,

Harvin J. Krause
Harvin J. Krause, Counselor
Sitka High School

MAR 26 1982

KENAI PENINSULA BOROUGH SCHOOL DISTRICT

PUPIL PERSONNEL SERVICES



Special Services

Nursing Services

Counseling

Media

March 22, 1982

Honorable Terry Stimson, Senator
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Stimson:

Thank you for sending me a copy of Senate Bill 437. I strongly support your contentions in this bill. Hopefully, this piece of legislation will foster more open and frank discussions between students and teachers or counselors.

Sincerely,

Kris Rogers

Kris Rogers,
Director

ER/cbj

cc: School Counselors

Principles of Confidentiality

A position statement approved by
ASCA governing Board, November,
1974; reviewed and reaffirmed 1980

Introduction

The members of the American School Counselor Association affirm their belief in the worth and dignity of the individual. It is the professional responsibility of school counselors to fully respect the right to privacy of those with whom they enter counseling relationships.

A counseling relationship requires an atmosphere of trust and confidence between the client and the counselor. A client has the right to privacy and to expect confidentiality. This confidentiality must not be abridged by the counselor except where there is a clear and present danger to the client or to other persons.

The counselor reserves the right to consult with other professionally competent persons when this is in the interest of the client. Confidentiality assures that disclosures made will not be divulged to others except when authorized by the client. Counseling information used in research and training of counselors should fully guarantee the anonymity of the counselee.

In the event of possible judicial proceedings the counselor should initially advise the school administration as well as the counselor if available, and, if necessary, consult legal counsel. When reports are required to be produced, every effort should be made to limit demands for information to those matters essential for the purposes of the legal proceeding.

Guidelines

1. The main purpose of privileged communication is to offer counselees a relationship in which they will be able to deal with what concerns them without fear of disclosure.

2. In reality, it is the client who is privileged. It is the client's own information and the client has the right to say who shall have access to it and who shall not.

3. The counselor and client must be provided with adequate physical facilities that guarantee the confidentiality of the counseling relationship.

4. With the enactment of Public Law 93-380 which speaks to the rights and privacy of parents and students, great care should be taken with recorded information.

5. Counselors must be concerned about individuals who have access to confidential information. Counselors must adhere to PL 93-380.

6. All faculty and administrative personnel should receive in-service training concerning the privacy rights of students. Counselors should assume the primary responsibility for educating school personnel in this area.

7. It should be the policy of each school to guarantee secretaries adequate working space so that students and school personnel will not come into contact with confidential information, even inadvertently.

8. Counselors should undertake a periodic review of information requested of their clients. Only relevant information should be retained.

9. Counselors must not discuss matters over the telephone. A counselor should insist that a request for information be made in writing on official stationery.

10. Counselors should be aware that it is much more difficult to guarantee confidentiality in group counseling than in individual counseling.

11. Communications made in good faith concerning a student may be classified as privileged by the courts and the communicating parties will be protected by law against legal actions seeking damages for libel or slander. Generally, it may be said that an occasion of this particular privilege arises when one acts in the bona fide discharge of a public or private duty. This privilege may be abused or lost by malice, improper and unjustifiable motive, bad faith, or excessive publication.

12. When a counselor is in doubt about what to release in a judicial proceeding, the counselor should arrange a conference with the judge to explain the counselor's dilemma and get advice on how to proceed.

13. Counselors have a responsibility to encourage school administrators to develop written policies concerning the ethical handling of all records in their school system. The development of additional guidelines relevant to the local situation are encouraged.

14. Finally, it is strongly recommended that state and local counselor associations implement these principles and guidelines with appropriate legislation.

With passage of the Family Educational Rights and Privacy Act, Public Law 93-380 (The Buckley Amendment), great care must be taken with recorded information. It is essential that counselors familiarize themselves with this new law which is a part of the omnibus education amendments of 1974, and support is intent to all their publics.

Provisions of this law on parent and student rights and privacy:

1. Deny federal funds to any education institution that refuses a student's parents access to their child's school record. Parents also have the right to challenge the accuracy of any records.

2. Deny federal funds if records are released to outside groups without parent consent with exception of other school officials, officials in other schools (transfer), some federal officials, court orders and financial aid applications, with clearance procedures of parents even on the exceptions.

All counselors should have a copy of the complete law. The section pertaining to rights and privacy is on pages 85-91, and may be requested from your congressman. A draft of proposed regulations pertaining to the law was published in the Monday, January 6, 1975 *Federal Register*.

Counseling and Guidance Program: Staffing Needs and Responsibilities

(A position statement approved by ASCA governing board, November, 1974; reviewed and reaffirmed 1980)

Introduction

This position of the American School Counselor Association describes the elements of a comprehensive and developmental guidance and counseling program and the criteria upon which the quantity and responsibilities of qualified, differentiated staff members is based. The ASCA statements of counseling role and function for the elementary, middle/junior high, secondary and post secondary settings are an integral part of the design and implementation of guidance and counseling programs.

Philosophy

"Who am I", "Who can I become as a person?", and "How can I best contribute to society?" are questions which guidance and counseling programs help all individuals to answer. In their design and operation, through the curriculum and through specialized approaches, guidance and counseling programs exist to improve the learning environment by involving students, staff, parents, community and others who influence the learning and development of the persons served by the program.

Through individual and group contacts over a period of time the counselor has a major role in helping all persons develop more adequate and realistic concepts of themselves, become aware of educational and occupational opportunities and to integrate their understanding of self and opportunities in making informed decisions.

Program Goals

A guidance and counseling program provides for direct involvement of and service to students, staff and community in order to facilitate achievement of the following program goals.

Assist persons in developing

1. A better understanding and acceptance of themselves: their strengths and limitations, aptitudes, needs, values, interests and worth as unique individuals.
2. Interpersonal relationships on the basis of mutual respect.
3. Problem-solving and decision-making skills.
4. And accepting increased responsibility for their educational, occupational and avocational development.

Standards

These standards are set forth in a manner which allows local school districts, institutions, agencies and others to design and implement guidance and counseling programs consistent with the unique needs found within each setting.

Program:

1. There is a written statement of objectives developed as a counselor responsibility, and with the involvement of appropriate others, specifying the overall guidance and counseling program as it involves and relates to the needs of the person in the school, institution, agency and community.

2. The basic program of guidance and counseling involves the process of consulting and coordinating services. The program is comprehensive and developmental and is implemented through the curriculum and through specialized approaches. Orientation, information, appraisal, placement, follow-up, follow-through, referral and research activities are included in the program.

3. There is evidence that all persons throughout the school, institution, agency and community have continuous opportunity to participate in the guidance and counseling program.

4. There is evidence that the guidance and counseling program is systematically planned, implemented and evaluated.

5. The guidance and counseling program is continued on an extended basis during periods when classes are not in session.

6. The guidance and counseling program is community oriented, serving not only students enrolled but also preschoolers, dropouts, graduates and other community citizens.

7. Counselor taught or initiated mini-courses in decision-making, value clarification, study skills, and/or similar units are offered.

8. The program serves three to five year old children and their parents where elementary school settings exist.

9. The guidance and counseling program provides other innovative service(s) or activities which are designed to meet unique needs of persons.

Staff:

The American School Counselor Association has, in the past, given considerable thought and attention to the value of specified counselor-pupil ratios which are necessary to achieve the basic objectives of guidance and counseling programs. The absence of specified

ratios in these standards should not be interpreted to mean that ratios cannot still serve as useful guides nor that they should not be maintained. ASCA holds the position that appropriate staff shall be employed to implement a guidance and counseling program designed to meet the needs of the persons to be involved in the program.

1. The guidance and counseling staff is qualified and appropriately certificated/licensed according to state agency standards.

2. The guidance and counseling staff is responsible for the design, implementation and evaluation of the services and activities prescribed in the program.

3. Professional, secretarial and/or para-professional staff are adequate in numbers to meet the objectives of the program.

4. Provision is made for staff to attend and/or participate in intra- and inter-professional meetings and activities within and outside the state.

Facilities:

Appropriate and meaningful guidance and counseling activities with individuals and groups takes place in a wide variety of settings, the specific environment often being determined by circumstances. There are, however, continuing student, program and staff needs in which privacy and confidentiality of conversation and records require specific counseling facilities.

1. Each counselor is provided with pleasant, private quarters conducive to conferences of a confidential nature and adequate in size to accommodate three to five persons.

2. The counseling facilities are located in an area readily accessible to students and others.

3. Each counselor's quarters is equipped with adequate telephone service.

4. A conveniently located area adequate for group guidance and counseling activities is available.

5. Adequate provision is made for the storage or display of all records and materials used by the counselor(s) in carrying out the guidance and counseling program.

Who Cares?

The counselor's role in the American school

This is ASCA's film designed for use with many audiences: PTA's and other parent groups . . . school boards . . . school staff, both administrative and teaching . . . and any group with a concern for education.

It's 28 minutes, 16 mm in color and sound, with a users guide. Order rental or purchase from APGA Film Department, 2 Skyline Place, Suite 400, 5203 Leesburg Pike, Falls Church, Virginia 22041.

6. Career resource center(s) are established and appropriately staffed to facilitate use of career awareness, exploration, planning, preparation and progression materials, equipment and supplies.

Materials and Equipment:

1. There is adequate budget for purchasing, maintaining and developing the materials and equipment necessary to achieve the objectives of the guidance and counseling program.

The Paraprofessional in Guidance and Pupil Personnel Services

(A position statement approved by ASCA governing board, November, 1974; reviewed and reaffirmed 1980)

A major goal of a guidance program is to enable students to make better personal, educational and career choices and to continue growth toward self-realization.

This may be accomplished through individual and group counseling, consultation and coordination with student, teachers, administrators, parents and the community. Of all the areas of education, counseling and pupil personnel services offer the best opportunities for individualization. In cooperation with all work setting personnel, humanization of education can become a reality.

To enable counselors to function more effectively and proficiently, the assignment of routine, incidental and technical duties must be performed by the paraprofessional.

The utilization of paraprofessionals in guidance and pupil personnel services provides a means of developing greater effectiveness within the guidance program.

With the appropriate education and training of carefully selected personnel, paraprofessionals under careful supervision could perform in the following areas:

As a clerical worker

- collect and maintain current guidance files
- reproduce materials needed for the counselor in group and/or individual conferences
- assist with all student record keeping
- assist students in completion of varied forms and applications.

As a resource person

- assist with the establishment and continuation of contacts with agencies and/or organizations in order to acquire information for the counselor; i.e., Chamber of Commerce, Employment Security Commission, etc.
- catalog and file materials of an educational, occupational, avocational and personal nature
- disseminate factual information and materials to appropriate publics
- maintain appropriate personnel and information records
- procure supplies and prepare materials for counselor use
- perform routine collecting and analytical statistical operations
- operate A-V equipment

As an assistant in the area of assessment, specifically testing

- collect and distribute test materials
- assist counselor in administering and monitoring group tests

- prepare and organize answer sheets for machine scoring, hand scoring small quantities (not interpretation of test results)

The paraprofessional should:

- Possess a sensitivity to the problems and needs of children
- Manifest an interest in working with children and youth
- Be knowledgeable in the role of the counselor and the total guidance program.

The counselor should:

- Assist in the selection of paraprofessionals
- Assume the responsibility of supervision of paraprofessionals.

For future planning, the professional organization should:

- Encourage the post secondary educational systems to offer training for paraprofessionals in guidance and pupil personnel services
- Encourage the collaboration of state education agency personnel, post secondary student services personnel, and local education agencies guidance personnel in instituting such courses and/or programs.

The training for paraprofessionals should include secretarial training, operation and use of multi-media materials, practical investigations and/or research techniques, human relations, group testing, ethics and home-school-community resources.

Student Rights: A Developing Right to Know

(A position statement approved by ASCA governing board, November, 1974)

The American School Counselor Association supports the constitutional rights of all persons to their individual and collective freedom to express views and feelings which have also been recognized by the courts of this nation.

The United States Congress has enacted into law protection of the rights and privacy of parents and students, particularly relating to the records maintained on each student. (PL 93-380) Our children and youth need specific interpretation related to the constitutional and lawful rights related to the rights to which present and former students (and parents) are entitled.

ASCA POSITION STATEMENTS

Therefore, the American School Counselor Association hereby formally supports the Constitution of the USA, in particular the first and fourteenth amendments as related to this position statement, and Public Law 93-380, ASCA thereby is committed to be actively involved in assuring that students be treated as citizens of the USA with all due rights, privileges and responsibilities.

Counselors are serving as advocates, activists, and catalysts for assuring these rights. Therefore, ASCA further supports and promotes:

- 1) improved record keeping;
- 2) law-abiding, discriminating release of information/data from student records;
- 3) the recording of positive, meaningful and non-valuation evaluations on student records and documents;
- 4) positive reinforcements in the learning processes;
- 5) student orientation to all rights and

due processes open to him/her i.e., how to get one's rights as a student; what to do if searched, seized or interrogated; reviewing one's school records (or parental review of same); resources of assistance available to students; freedom to express one's views; freedom of the press; disseminating information regarding state statutes on corporal punishment; the right to have a Student Bill of Rights in the school, school system, or state;

6) student orientation and understanding of student responsibilities as well as student rights under the Constitution and PL 93-380 without understanding student rights as has more frequently been the case.

ASCA supports legislation and court actions which will insure rights of students as citizens of the USA. ASCA's position is that the counselor is the "student advocate" - supporter, intercessor, pleader, defender, through speaking, writing, and action!

Teacher-Counselor Working Relationships in Career Education

(A position statement approved by ASCA Governing board, November, 1974; reviewed and reaffirmed 1980)

Career education stresses an interdisciplinary approach to planning educational experiences for students. Such experiences should be planned based on input from all aspects of the curriculum, as well as input from the students involved. In the day-to-day schedules of professionals involved in education, provision must be made for times and places to share across discipline lines. Both the counselor and the teacher are key components of any professional education planning team. Each must share a responsibility for facilitating joint planning and dialogue regarding curriculum development in career education.

The guidance program can be viewed as including three components: consultation, coordination and counseling. Counselors and teachers must develop the kinds of working relationships which assure the maintenance of these components. Under the philosophy of career education, the processes of self-concept development, values clarification and decision-making skills offer areas where the counselor-teacher team must work together in translating these processes into action strategies.

ASCA POSITION STATEMENTS

Drug Counseling

(A position statement approved by ASCA governing board, March, 1975; a revision of former statement on "Counselor Role in Drug Counseling.")

The American School Counselor Association supports a position that serves as a frame of reference for counselors working with counselees involved or potentially involved in the drug culture. This position serves as a guide and as support for counselors in all work settings.

The counselor respects the counselee's dignity, integrity and self-worth in a relationship of trust. Counselors help counselees to understand themselves as self-respecting human beings, while helping them to accept responsibility for their actions. Counselors discuss with counselees any conflicting responsibilities as they relate to legal and/or individual limits to confidentiality.

Counselors focus on the personal concerns of the counselee rather than the drugs themselves, since the former may be the cause and the latter, a symptom. Counselees' problems may be beyond the expertise of the counselor. Referral to appropriate agencies and/or other professional consultation is an integral part of the counselor's responsibility to the client. Counselors stimulate a continuing dialogue among school and community resources to enhance and initiate services to students and faculty.

The counselor has an obligation to respect the basic rights and responsibilities of the parents in their concerns with their children. The counselor must use information shared by parents in accord with prescribed professional ethics of the American School Counselor Association and within the limitations defined by local, state and federal laws. Referral services may be deemed appropriate by the parties concerned and the counselor will be able to recommend such agencies.

Categorical Funding for Support of Counseling and Guidance Services

(A position statement approved by ASCA governing board, November, 1974)

One of the critical issues which has faced supporters of guidance, counseling and testing programs for some number of years, has been the issue of categorical aid vs. consolidated or block grants especially related to the Elementary and Secondary Education Act, Title III. The position of the APGA Government Relations Committee as of August, 1973, was one of insistence on categorical funding of ESEA III and against further consolidation of ESEA III with any other Elementary and Secondary titles. The governing board of the American School Counselor Association strongly endorses this position.

The position is further reinforced by:

1. The value and need for categorical funding being stressed by guidance personnel in state departments and big city school systems.
2. Categorical funding as it now exists, gives assurances for the continuation of full funding of counseling and guidance programs and activities throughout state education agencies and local education agencies across the country.
3. Consolidation could mean that counseling and guidance programs would suffer at the state level in favor of more powerful educational lobbies and political pressure groups seeking the federal dollars in a broadly consolidated educational program.

Therefore, the American School Counselor Association joins other national education organizations in support of categorical funding for support of counseling and guidance services.

The Necessary Cooperation: Rehabilitation and School Counselors Must Work Together

(A joint position statement approved by the American School Counselor Association Governing Board and the American Rehabilitation Counseling Association in April 1979.)

Introduction

Because school counselors and rehabilitation counselors provide essential support services, they must work more closely with each other in the counseling and placement of handicapped children. Public Law 94-142, the Education for All Handicapped Children Act (Section 121a, 13; 121b, 137), mandates services in which school counselors and rehabilitation counselors assess student needs, evaluate interests and aptitudes, and aid in the formulation of educational and vocational goals.

Eligibility for the school component will be determined through the evaluation process as outlined in the law. Rehabilitation and school counselors need to be included in the development of the Individual Educational Plans (IEP). People with physical, mental, or emotional handicaps are generally eligible for rehabilitation services. When the student leaves school, the transition to another program (possibly through rehabilitation services) or employment will be smoother because of the team efforts of the rehabilitation and school counselors.

Statement Defining Issue

Rehabilitation counselors and school counselors currently work independently of each other when providing services to handicapped children. Expertise, services, and information should be shared for the benefit of the pupil. Also, state and federal laws for the handicapped either require or direct cooperation between agencies.

Statement of Position

The passage of PL 94-142, the Education for All Handicapped Children Act, places the responsibility of providing public education for all special needs children (ages 3 through 21) on the local public schools. Although the responsibility rests with the school system, state agencies are required to share information, expertise, and services. The law makes it national policy to ensure that all handicapped children have a free appropriate public education that emphasizes special education and related services designed to meet their unique needs.

Specifically, rehabilitation counselors and school counselors need to communicate with each other as frequently as possible. Both rehabilitation and school counselors should be included on the IEP teams. Services to the high-school age handicapped population should include vocational rehabilitation counseling and preparation for post-high-school programs with the full com-

plement of rehabilitation services (e.g., corrective surgery, living arrangements, hospitalization, prosthetic appliances, transportation).

Rehabilitation counselors should provide consultation on the social and vocational aspects of disabilities as well as technical assistance with vocational program planning.

School counselors should help rehabilitation counselors through appropriate communications concerning the progress and needs of students. School and rehabilitation counselors should share information about student interests, aptitudes, educational and vocational goals. Rehabilitation and school counselors are responsible for implementing the services required by the individual student's needs.

School and rehabilitation counselors should jointly develop and arrange appropriate aptitude, interest, and achievement testing as well as medical,

psychological, and vocational evaluations.

The rehabilitation and school counselors must work together to assist the student in developing and implementing a rehabilitation program that will lead to appropriate employment. This program may include further educational or vocational training as necessary.

In conclusion, it is imperative that handicapped children receive the educational and related services necessary to function in society in the least restrictive environment. As team members, school counselors and rehabilitation counselors can be of greatest assistance to handicapped children by combining resources and expertise in the development and implementation of Individual Educational Plans now mandated by federal legislation. The long-needed cooperation between school counselors and rehabilitation counselors will be of tremendous benefit in accomplishing these goals.

Counselors Completing the Endorsement* Section of College Application Materials

(A policy statement originally approved by ASCA governing board, May, 1972, and amended November, 1974; reviewed and reaffirmed 1980)

Counselors charged with the responsibility of completing college application information should not complete the endorsement* section of such application materials. Furthermore, ASCA will make this policy known to appropriate associations to delete such endorsement sections from college application forms.

The rationale for this policy is as follows:

ASCA recognizes the role of the school counselor in the admissions process as one of providing counseling services to the student, which enables him/her to make decisions about post secondary education. The school furnishes sufficient objective data concerning the student's qualifications for post secondary education. Anything that could impede this counseling process works to the detriment of the student, the school and the post secondary institution.

The endorsement section of transcript-recommendation forms can be such an impediment. The counselor does not have data on the pool of current applicants with whom a given student will be competing at a given post secondary institutions. Indeed, the post secondary institution does not have this data until its own pool of current applicants has been completed. Nor does the counselor have information on the current specific needs a post secondary institution has to round out its student body. Since this information is not available to a counselor, a specific endorsement of the student is meaningless.

Also, the endorsement section of the transcript-recommendation form can lead a student to believe that the secondary school and/or counselor makes the admission decision. This is not a desirable conclusion since this belief is harmful to the counseling relationship and since the decision to admit is that of the post secondary institution.

*The endorsement section of college application forms is interpreted to be that portion of the application that requires a counselor to "recommend," "not recommend," or "recommend conditionally" a student to be admitted to a post secondary institution. This policy is not intended to delete all counselor comments or recommendations from college application forms.

The Counselor and Negotiations

(A position statement approved by ASCA governing board, November, 1974.)

The role of a counselor in negotiations must be based on the alignment of the counselor in the bargaining structure of the work setting. It is the responsibility of that counselor to work for and support the bargaining unit in its attempts to improve working conditions and improve the education of children.

STANDARDIZED GROUP I.Q. TESTING

A Position Statement of the American School Counselor Association

There is concern among educators as well as various groups within the public sector regarding the use of standardized, group intelligence tests or the so called I.Q. tests. Users of these tests cite several reasons why such testing should be discontinued. Concern centers around the following distinct issues.

The first issue is the utilization of I.Q. tests to categorize individuals. Children have diverse talents and abilities, and the purpose of schools is to nurture these so that optimal educational development takes place. This makes categorization based on the bell-shaped curve inappropriate.

A second issue is that standardized group I.Q. tests do not measure what they purport to measure. A paper and pencil test composed of multiple choice items is not an adequate means for measuring the complexities of human intelligence. As a result of these limitations, inadequate interpretations may be made about children's abilities.

The third issue deals with test basis. The test content is based primarily on white middle class culture and values. Interpretations tend to be inaccurate and misleading when used with students from other types of backgrounds. Consequently, some students are in reality being classified as a result of their socio-economic or racial status.

The final issue is that standardized tests of intelligence are used throughout the nation in ways which permanently effect the self image of the tested. This alters their own aspirations as to their probable futures and may influence the expectations of their teachers.

It is the position of the American School Counselor Association to oppose continued use of standardized group intelligence tests. ASCA joins with other educational groups in working toward a national discontinuation of such testing until a time when the problems with the tests and their users can be corrected.

EVALUATION OF SCHOOL COUNSELORS

(A position statement of the American School Counselor Association, March 1978.)

Since the primary purpose of the evaluation process is to assure the continued professional growth of school counselors, the American School Counselor Association is committed to the continued improvement of this process. It is the organization's position that evaluations must be based on specific facts and comprehensive evaluation criteria which conform to local and state regulations.

Because of the American School Counselor Association's commitment to the improvement of school counseling services, the Association welcomes the opportunity to aid local administrators, department heads, and others charged with the improvement and/or development of evaluation instruments and procedures.

ASCA Position Statements DEVELOPMENTAL GUIDANCE

(The following position statement was approved by the Governing Board of the American School Counselor Association in December, 1978.)

Introduction

During recent years a number of counselor educators and school counselors have advanced the proposition that counseling can and should become more proactive and preventative in its focus and more developmental in its content and process. Viewed in the context of an evolving societal emphasis upon personal growth and an expanding professional expertise, developmental guidance has resulted in a potentially dynamic and promising approach to the helping relationship of the school counselor. The concept of developmental guidance has been discussed under various rubrics, such as (deliberate) psychological education, human relations training, and preventative mental health. Developmental guidance is a reaffirmation and actualization of the belief that guidance is for all students and that its purpose is to maximally facilitate personal development.

Definition

Developmental guidance is that component of all guidance efforts which fosters planned intervention within educational and other human development services programs at all points in the human life cycle to vigorously stimulate and actively facilitate the total development of individuals in all areas—personal, social, emotional, career, moral-ethical, cognitive, aesthetic—and to promote the in-

tegration of the several components into an individual life-style.

Endorsement

The American School Counselor Association formally endorses, supports, and encourages the incorporation of developmental guidance in the role and function of the school counselor.

Antecedents

In the past the role of the school counselor has suffered from the restrictions of historical precedent, philosophical tradition, financial support, administrative definition, and counselor selection and preparation. Counselor functions have often been limited to crisis management, adjustment coordination, vocational guidance, and clerical and quasi-administrative tasks.

Catalysts

Prompted by cultural change, progressive philosophy, advancement of knowledge and methodological improvement in the behavioral sciences, a climate of open public discourse, pressures of educational accountability, institutional economics, and professional survival, the "traditional" work of the school counselor is in need of well-reasoned revision.

Direction

If counseling is viewed humanistically, holistically, and comprehensively — that is developmentally — then the rationale for developmental guidance is clearly defined: Counseling should be habitative as well as rehabilitative, proactive as well as reactive, preventative as well as remedial, skill-additive as well as problem-reductive, and characterized by outreach as well as availability. Developmental guidance is the summative terminology which connotes this emphasis.

Specifically, then, developmental guidance refers to the process and content of confluent human development as promoted by planned, purposeful, and sequential intervention.

Content

The content of developmental guidance will vary according to the developmental levels, stages, and needs of participants; counselor competence and resources; and other factors. Examples of programs of contemporary interest include the following: human development (theories, stages, tasks, principles); career development (awareness, exploration, selection, employability skills); academic development (achievement motivation, study skills, test preparation, test wiseness); communication skills, interpersonal relations, decision making, values clarification, marriage

and family planning, parent education, moral development, affective education, conflict resolution, leadership training, assertion training, relaxation training, human sexuality, drug education, death education, and situational adjustment and self-management (divorce adjustment, depression management, weight control, behavior modification). This list is not exhaustive.

Intervention

Many means and resources for developmental guidance intervention are available, and counselors should select from among these alternatives according to needs identified in his or her work situation. Examples of means of delivery include: mini-courses, academic release time from designated classes for developmental guidance activities, curricular scheduling of guidance activities, extended hours (after school and evening), and classroom guidance. Examples of techniques and resources include: resource centers and libraries; programmed texts and workbooks; cofacilitation and consultation with teachers, paraprofessionals, peer counselors, and others; counseling and educational kits; curricular aids, media, bibliotherapy, cinematherapy; contracting; and experiential education. Examples of strategies include: direct service delivery, consultation, team teaching, peer counseling, and paraprofessional counseling.

Medium of Delivery

In terms of efficiency, as well as effectiveness, group approaches are the preferred medium of delivery for developmental guidance activities. By definition, "group" refers to a natural or created cluster of individuals, as small in number as two or of unlimited size. The clusters may be identified as families, classrooms and clubs, employees, clients, or other combinations of persons who come together as a result of shared need or purpose, common attributes, and/or other coincident characteristics.

Competencies

Essential preparation for developmental guidance intervention involves a thorough understanding of human development (descriptive and theoretical); knowledge of counseling

theory and practice; competence in counseling techniques and group processes; skill in program development and management; assessment, appraisal, and diagnostic skills based on developmental concepts; practical competence in basic statistics, applied research, and program evaluation methods; and specific knowledge in the area of developmental emphasis. The counselor should be personally effective and comfortable as well as professionally competent in all areas in which developmental guidance intervention is offered.

Developmental guidance specialists, must, at a minimum, be able to effectively deal with questions such as: What are the general characteristics, expectations, tasks, and behaviors of individuals at this state of development? What are this individual's characteristics, expectations, tasks, and behaviors? What can impede the process of development for this individual? What will facilitate the process of development for this individual?

Because the emphasis on developmental guidance is fairly new, counselor educators may need to modify the counselor education curriculum in order to prepare counseling students as proficient developmental interventionists. Because such an approach has often been taught as an ideal rather than as reality, as an attitude instead of a skill, counselor educators may be required to further develop their educative role.

Counseling students should seek to add the skills of developmental guidance intervention to their repertoire—if necessary, through adjuncts and alternatives to the usual counselor education curricula. Practicing counselors whose programs did not include developmental guidance components should seek to acquire the skills of developmental guidance intervention as part of their professional renewal efforts.

The developmental guidance counselor should be involved in a continuing program of professional improvement in developmental guidance expertise and strategies.

Competencies may be acquired, maintained, and improved through a variety of means, for example, graduate study, workshops, institutes and seminars, meetings and programs of professional

associations, self-study of journals, contemporary texts and instructional manuals, in-service education, continuing and extended education, internships, and consultation.

Implementation

Implementation strategies for the initiation of developmental guidance will most likely require assertiveness and ingenuity. Many administrators, teachers, other school personnel, students, and parents will be unaccustomed to the concept, intent, and outcome of developmental guidance; therefore, the counselor's competence must be visible; program development and planning thorough; rationale for programs convincing; conduct of procedures professional, and programs measured, evaluated and reported effectively, both formally and informally. Program implementation must be paced so as to minimize institutional resistance and prevent overextension. Although organizational management skills and change agent strategies will prove useful to those initiating developmental guidance programs, the expertise and personhood of the counselor may be the critical element in the implementation of developmental guidance.

Guidelines

There are several general principles which should help insure quality and effectiveness in the implementation of developmental guidance:

1. The program should be systematic, sequential, and comprehensive.
2. The program should be jointly founded upon developmental psychology, educational philosophy, and counseling methodology.
3. Both process and product (of the program itself and the individuals in it) should be stressed.
4. All personal domains — cognitive, affective, behavioral, experiential and environmental — should be emphasized.
5. Programs should emphasize preparation for the future and consolidation of the present.
6. Individualization and transfer of learning should be central to program procedure and method.
7. Evaluation and corrective feedback are essential.

ASCA POSITION STATEMENT ON PEER COUNSELING

(The following position statement was approved by the Governing Board of the American School Counselor Association in December, 1978.)

It is the position of the American School Counselor Association that Peer Counseling Programs enhance the effectiveness of the counseling program by increasing outreach programs and expansion of guidance services. Through proper selection, training, and supervision, peer counseling can be a positive force within the school and community

that will meet the needs of a sizable segment of the student body.

Teenagers often communicate their problems to their peers rather than to parents, administrators, or counselors. There exists in every school community a segment of the student population that rejects adult relationships. In our

society, peer influence may be the strongest single motivational force in a teenager's life. Peers can be selected and trained by professional counselors in communication and counseling skills through a carefully planned peer counseling program, and produce additional guidance services which otherwise might never have been realized.

Peer Counseling Defined

Peer counseling is defined as a variety of interpersonal helping behaviors assumed by nonprofessionals who undertake a helping role with others. Peer counseling includes one-to-one helping relationships, group leadership, discussion leadership, advisement, tutoring, and all activities of an interpersonal helping or assisting nature. A peer counselor refers to a person who assumes the role of a helping person with contemporaries. The term "peer" denotes a person who shares related values, experiences, life style, and is approximately the same age.

Peer Counseling Roles

Peer counselors can provide a variety of useful and helpful services for schools, depending on the individual school's needs. It should be emphasized that because peer counselors are trained to function in an interpersonal capacity, they should not be used as clerical assistants.

The most obvious role of peer counselors is that of one-to-one counseling. Talking with students about their personal problems, referring peers to other sources of help in the community, giving information about drugs, sex, venereal disease, and helping students with their school problems are some of the types of assistance given by peer counselors on a one-to-one basis.

Peer counselors can be effective in group settings. Their training enables them to be used as group leaders, assistants in counseling groups, teachers of counseling skills to other students in counseling groups, or as communications skills trainers in the classroom. Peer counselors can also help to train new groups of peer counselors.

There are several educational functions that a peer counselor can perform effectively, such as tutoring students in academic areas, serving as readers for nonreaders, and assisting Special Education consultants in working with learning and behaviorally disabled students.

Peer counselors can be helpful in many guidance capacities. They are very effective in greeting new students and their parents and in making them feel welcome. They can be used to help with the registration process by aiding students in the selection of their classes and serving as assistants and runners on Registration Nights. Other guidance functions peer counselors can perform are serving as Career Center helpers, Open House guides, writing the Guidance Newsletter, helping with organizational details of testing, and being responsible for the management of Career Program speakers.

Professional Counselors' Responsibilities in Peer Counseling

The professional counselor must accept the responsibility for adequately meeting the needs of the school population and for writing a peer counseling program designed to meet those needs. The counselor must then accept the additional responsibilities for:

1. Devising a plan for selection of peer counselors which is compatible with the population to be served.

2. Coordinating the leadership of an adequate training program for the peer counselors selected for the program.

3. Planning the professional counselor's time budget so that adequate time is scheduled for work with peer counselors.

4. Constructing a support system through positive, factual, and honest public relations.

5. Providing time for meeting with the peer counseling group on a weekly basis for continued training, supervision, sharing, and personal growth.

6. Continually monitoring and evaluating the training and impact of the program, and instituting any necessary changes to help the program meet the assessed needs of the population it serves.

The professional counselor must constantly serve as a support and a resource person to peer counselors. The counselor must have a broad, reliable awareness of competent resources and support professionals in the community who can and will accept referrals when needed.

The professional counselor should accept responsibility for the design and completion of research on the program. Follow-up studies must be conducted and program effectiveness must be studied in an objective manner. Results should be reported to the population served and to interested professionals; it is the responsibility of the counselor to share information, research, and expertise with other interested counselors.

How Peer Counselors Help The Professional Counselor

After training and with ongoing supervision, peer counselors can work as important members of the guidance team. Peer counselors often are able to help accomplish things that the professional cannot do alone or cannot do as quickly alone. Therefore, peer counselors help increase the services of the counseling center. They are able to serve in an outreach function and be of service to any population that may feel uncomfortable talking with a professional counselor.

The peer counselors may assist peers with a variety of problems as they serve as listeners. While serving as listeners, they are able to help others on a daily basis to stay healthy mentally, or to reduce crisis situations by alerting professional counselors to problems of a serious nature.

As counselors train peer counselors with helping skills, the peer counselor grows as persons and become more functional at a higher level. Peer counselors are also able to see if they want a future occupation in the helping profession. Peer counselors are trained to become more effective adults.

It is imperative that all guidance and counseling departments in the schools plan, initiate, and implement a peer counseling program. Well-trained peer counselors can have a positive effect on students that no one else can provide. Students sometimes relate and accept alternative patterns of behavior from peers who are struggling with similar feelings and problems. Peer counselors can create a tremendous positive impact on the student population.

ASCA POSITION STATEMENT ON STUDENT RECOGNITION PROGRAMS

(The following position statement was approved by the Governing Board of the American School Counselor Association in December, 1978.)

It is the position of the American School Counselor Association that counselors should endeavor to protect students and their families in accordance with federal law (PL 93-380), and should alert students and parents to be particularly cautious in approving the release of names and addresses of students to "recognition programs."

Counselors are concerned that some recognition programs:

1. Lack educational benefit to selected students.

2. Provide convenient lists which may be used for noneducational purposes.

3. Exploit students and families when these programs solicit the purchase of certificates, pins, publications, etc.

4. Use methods of selection which are not clear.

5. May discriminate when some students are selected.

The counselor's position should be to seek administrative support and cooperation in publicizing these concerns so that students and their families will be informed in the release of names and addresses of students.

NATIONWIDE STATUTES DEALING WITH CONFIDENTIALITY:

OREGON: 44.040 Confidential communications. (j) There are particular relations in which it is the policy of the law to encourage confidence, and to preserve it inviolate; therefore a person cannot be examined as a witness in the following cases:

(i) A certificated staff member of an elementary or secondary school shall not be examined in any civil action or proceeding, as to any conversation between the certificated staff member and a student which relates to the personal affairs of the student or family of the student, and which if disclosed would tend to damage or incriminate the student or family. Any violation of the privilege provided by this paragraph may result in the suspension of certification of the professional staff member as provided in ORS 342.175, 342.177 and 342.180.

(k) A certificated school counselor regularly employed and designated in such capacity by a public school shall not, without the consent of the student, be examined as to any communication made by the student to the counselor in the official capacity of the counselor in any civil action or proceeding or a criminal action or proceeding in which such student is a party concerning the past use, abuse or sale of drugs, controlled substances or alcoholic liquor. Any violation of the privilege provided by this paragraph may result in the suspension of certification of the professional school counselor as provided in ORS 342.175, 342.177 and 342.180. However, in the event that the student's condition presents a clear and imminent danger to the student or to others, the counselor shall report this fact to an appropriate responsible authority or take such emergency measures as the situation demands.

North Carolina: 8-53.4. School counselor privilege. No person certified by the State Department of Public Instruction as a school counselor and duly appointed or designated as such by the governing body of a public school system within this State or by the head of any private school within this State shall be competent to testify in any action, suit, or proceeding concerning any information acquired in rendering counseling services to any student enrolled in such public school system or private school, and which information was necessary to enable him to render counseling services; provided, however, that this section shall not apply where the student in open court waives the privilege

conferred; provided further that the preceding judge may compel such disclosure, if in his opinion the same is necessary to a proper administration of justice. ([97], c. 943.)

Nevada: 49.290 Counselor and pupil privilege. 1. As used in this section, "counselor" means a person who is regularly employed by a public or private school in this state as a counselor, psychologist, or psychological examiner for the purpose of counseling pupils, and who holds a valid certificate issued by the superintendent of public instruction authorizing the holder to engage in pupil counseling. 2. Except for communications relating to any criminal offense the punishment for which is death or life imprisonment, communications by a pupil to a counselor in the course of counseling or psychological examination are privileged communications, and a counselor shall not, without the consent of the pupil, be examined as a witness concerning any such communication in any civil or criminal action to which such pupil is a party.

49.291 Teacher and pupil privilege. 1. As used in this section, "teacher" means a person who is regularly employed by a public or private school in this state as a teacher or administrator, and who holds a valid certificate issued by the superintendent of public instruction authorizing the holder to teach or perform administrative functions in schools. 2. Communications by a pupil to a teacher concerning the pupil's possession or use of drugs or alcoholic beverages made while the teacher was counseling or attempting to counsel such pupil are privileged communications and the teacher shall not, without the consent of the pupil, be examined as a witness concerning any such communication in any civil or criminal action to which the pupil is a party.

Michigan: 600.2]65 School teachers and employees; disclosing of students' communications. Sec. 2]65. No teacher, guidance counselor, 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 from him by such records or 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 is a minor, with the consent of his or her parent or legal guardian.

Montana: 26-1-809. Confidential communications by student to employee of educational institution. A counselor, psychologist, nurse, or teacher employed by any educational institution cannot be examined as to communications made to him in confidence by a duly registered student of such institution. However, this provision shall not apply where consent has been given by the student, if not a minor, or, if he is a minor, by the student and his parent or legal guardian.

Connecticut: Sec. 10-154a. Professional communications between teacher or nurse and student. Surrender of physical evidence obtained from students. (a) As used in this section, (1) "school" means a public school as defined in section 10-183b or a private elementary or secondary school attendance at which meets the requirements of section 10-184; (2) a "professional employee" means a person employed by a school who (A) holds a certificate from the state board of education, (B) is a member of a faculty where certification is not required, (C) is an administration officer of a school, or (D) is a registered nurse employed by or assigned to a school; (3) a "student" is a person enrolled in a school; (4) a "professional communication" is any communication made privately and in confidence by a student to a professional employee of such student's school in the course of the latter's employment.

(b) Any such professional employee shall not be required to disclose any information acquired through a professional communication with a student, when such information concerns alcohol or drug abuse or any alcoholic or drug problem of such student but if such employee obtains physical evidence from such student indicating that a crime has been or is being committed by such student, such employee shall be required to turn such evidence over to school administrators or law enforcement officials within two school days after receipt of such physical evidence, provided if such evidence is obtained less than two days before a school vacation or the end of a school year, such evidence shall be turned over within two calendar days after receipt thereof, excluding Saturdays, Sundays, and holidays, and provided further in no such case shall such employee be required to disclose the name of the student from whom he obtained such evidence and such employee shall be immune from arrest and prosecution for the possession of such evidence obtained from such student.

(c) Any physical evidence surrendered to a school administration pursuant to subsection (b) of this section shall be turned over by such school administrator to the commissioner of consumer protection or the appropriate law enforcement agency within three days after receipt of such physical evidence, for its proper disposition, provided if such evidence is obtained less than three days before a school vacation or the end of a school year, such evidence shall be turned over within three calendar days from receipt thereof, excluding Saturdays, Sundays, and holidays.

(d) Any such professional employee who, in good faith discloses or does not disclose, such professional communication, shall be immune from any liability, civil or criminal, which might otherwise be incurred or imposed, and shall have the same immunity with respect to any judicial proceeding which results from such disclosure.

Idaho: 9-203. Confidential relations and communications. There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in the following cases:

6. Any certificated counselor, psychologist or psychological examiner, duly appointed, regularly employed and designated in such capacity by any public or private school in this state for the purpose of counseling students, shall be immune from disclosing, without the consent of the student, any communication made by any student so counseled or examined in any civil or criminal action to which such student is a party. Such matters so communicated shall be privileged and protected against disclosure.

Iowa: No qualified school guidance counselor, who has met the certification and approval standards of the department of public instruction as provided in section 257.25, subsection 9, who obtains information by reason of his employment as a qualified school guidance counselor shall be allowed, in giving testimony, to disclose any confidential communications properly entrusted to him by a pupil or his parent or guardian in his capacity as a qualified school guidance counselor and necessary and proper to enable him to perform his duties as a qualified school guidance counselor.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 22, 1981

SUBJECT: Confidentiality for Teachers/Counselors
(Work Order No. 12-0422)

TO: Senator Terry Stimson

FROM: Billy G. Berrier 
Director
Division of Legal Services

In response to your request, I have enclosed statutes from Connecticut, Idaho, Iowa, Michigan, Montana, Nevada, North Carolina, and Oregon which give a confidential or privileged status to communications between students and school teachers/school counselors. Pertinent sections are highlighted.

Generally, these statutes are placed under titles concerning court rules -- evidence. The teacher or counselor is not considered competent to testify where the privilege exists, unless waived by the student.

If you need further information, please call.

BGB:GC:blg

Enclosures

**RIGHTS, COMPETENCY AND
PRIVILEGES OF WITNESSES**

44.010 Witness defined. A witness is a person whose declaration is received as evidence for any purpose, whether it is made on oral examination, by deposition or by affidavit.

44.020 Who may be witness. All persons, except as provided in ORS 44.030, who, having organs of sense can perceive, and perceiving can make known their perceptions to others, may be witnesses. Therefore, neither parties nor other persons who have an interest in the event of an action, suit or proceeding are excluded; nor those convicted of crime; nor persons on account of their opinions on matters of religious belief; although in every case, except the last, the credibility of the witness may be drawn in question, as provided in ORS 44.370.

44.030 Persons not competent as witnesses. The following persons are not competent witnesses:

(1) Those of unsound mind at the time of their production for examination.

(2) Children under 10 years of age who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly. Whenever a child under the age of 10 years is produced as a witness, the court shall, by an examination made by itself, publicly or separate and apart with counsel present, ascertain to its own satisfaction whether the child has sufficient intelligence and sense of obligation to tell the truth to be safely admitted to testify.

44.040 Confidential communications. (1) There are particular relations in which it is the policy of the law to encourage confidence, and to preserve it inviolate; therefore a person cannot be examined as a witness in the following cases:

(a) A spouse shall not be examined for or against the other spouse without consent of the other spouse; nor can either, during the marriage or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during the marriage. The exception does not apply to a civil action or proceeding by, one against the other, or to a criminal action or proceeding for a crime committed by one against the other.

(b) An attorney shall not, without the consent of the client, be examined as to any communication made by the client to the attorney, or the advice given by the attorney thereon, in the course of professional employment.

(c) A member of the clergy shall not, without the consent of the person making the communication, be examined as to any confidential communication made to the member in the professional character of the member. As used in this paragraph, "member of the clergy" means a minister of any church, religious denomination or organization who in the course of the discipline or practice of that church, denomination or organization is authorized or accustomed to hearing confidential communications and, under the discipline or tenets of that church, denomination or organization, has a duty to keep such communications secret.

(d) Subject to ORCP 44, a regular physician or surgeon shall not, without the consent of the patient, be examined in a civil action or proceeding, as to any information acquired in attending the patient, which was necessary to enable the physician or surgeon to prescribe or act for the patient.

(e) A public officer shall not be examined as to public records determined to be exempt from disclosure under ORS 192.500.

(f) A stenographer shall not, without the consent of the employer, be examined as to any communication or dictation made by the employer to the stenographer in the course of professional employment.

(g) A licensed professional nurse shall not, without the consent of a patient who was cared for by such nurse, be examined in a civil action or proceeding, as to any information acquired in caring for the patient, which was necessary to enable the nurse to care for the patient.

(h) A licensed psychologist, as defined in ORS 675.010, shall not, without the consent of the client, be examined as to any communication made by the client to the psychologist, or the advice given by the psychologist thereon, in the course of professional employment.

(i) A certificated staff member of an elementary or secondary school shall not be examined in any civil action or proceeding, as to any conversation between the certificated staff member and a student which relates to the personal affairs of the student or family of,

the student, and which if disclosed would tend to damage or incriminate the student or family. Any violation of the privilege provided by this paragraph may result in the suspension of certification of the professional staff member as provided in ORS 342.175, 342.177 and 342.180.

(j) A physician licensed to practice medicine by the Board of Medical Examiners for the State of Oregon and a local health authority officer or employe shall not be examined in a civil or criminal court proceeding as to the existence or contents of any records of a person examined or treated for an infectious venereal disease without the consent of the person examined or treated for such disease unless the public interest by clear and convincing evidence requires disclosure in the particular instance.

(k) A certificated school counselor regularly employed and designated in such capacity by a public school shall not, without the consent of the student, be examined as to any communication made by the student to the counselor in the official capacity of the counselor in any civil action or proceeding or a criminal action or proceeding in which such student is a party concerning the past use, abuse or sale of drugs, controlled substances or alcoholic liquor. Any violation of the privilege provided by this paragraph may result in the suspension of certification of the professional school counselor as provided in ORS 342.175, 342.177 and 342.180. However, in the event that the student's condition presents a clear and imminent danger to the student or to others, the counselor shall report this fact to an appropriate responsible authority or take such other emergency measures as the situation demands.

(l) A clinical social worker registered by the State Board of Clinical Social Workers shall not be examined in a civil or criminal court proceeding as to any communication given him by a client in the course of non-investigatory professional activity when such communication was given to enable the registered clinical social worker to aid the client, except:

(A) When the client or those persons legally responsible for the client's affairs give consent to the disclosure;

(B) When the client initiates legal action or makes a complaint against the registered clinical social worker to the board;

(C) When the communication reveals the intent to commit a crime or harmful act;

(D) When the information reveals that a minor was the victim of a crime, abuse or neglect; or

(E) When the registered clinical social worker is a public employe and the public employer has determined that examination in a civil or criminal court proceeding is necessary in the performance of the duty of the social worker as a public employe.

(m) A naturopathic physician licensed under ORS chapter 685 by the Naturopathic Board of Examiners shall not, without the consent of his patient, be examined in a civil action, suit or proceeding, as to any information acquired in attending the patient, which was necessary to enable him to act for the patient.

(2) If a party to the action or proceeding voluntarily offers testimony as a witness, it is deemed a consent to the examination also of a spouse, attorney, clergyman, physician or surgeon, stenographer, licensed professional nurse, licensed psychologist, licensed naturopath, a registered clinical social worker, a certificated staff member, local health authority officer employe or a certificated school counselor on the same subject. (Amended by 1957 c. 44 § 1; 1963 c. 276 § 14; 1971 c. 213 § 4; 1973 c. 14 § 10; 1973 c. 277 § 11a; 1973 c. 794 § 13; 1975 c. 634 § 1; 1975 c. 726 § 1; 1977 c. 36 § 1; 1977 c. 877 § 12a; 1979 c. 284 § 7; 1979 c. 721 § 2; 1979 c. 744 § 1a; 1979 c. 769 § 13a)

44.050 Judge or juror as a witness. The judge or any juror may be called as a witness by either party, but in the former case it is in the discretion of the court or judge to order the trial to be postponed or suspended and to take place before another judge.

44.060 Facts to which a witness may testify. A witness can testify of those facts only which he knows of his own knowledge, that is, which are derived from his own perceptions, except in those express cases in which his opinions or inferences, or the declarations of others, are admissible.

44.070 What questions witness must answer. A witness shall answer questions legal and pertinent to the matter in issue, though his answer may establish a claim against himself; but he need not give an answer which will have a direct tendency to subject him to punishment for a felony, or to degrade his character, unless, in the latter

(a) Any statement made by a person in attendance at such meeting who is a party to an action or proceeding the subject of which is reviewed at such meeting.

(b) Any statement made by a person who is requesting hospital staff privileges.

(c) The proceedings of any meeting considering an action against an insurance carrier alleging bad faith by the carrier in refusing to accept a settlement offer within the policy limits.

(d) Any matter relating to the proceedings or records of such committees which is contained in health care records furnished in accordance with NRS 629.061.

(Added to NRS by 1971, 785; A 1577, 1314)

49.275 Privilege for news media. No reporter, former reporter or editorial employee of any newspaper, periodical or press association or employee of any radio or television station may be required to disclose any published or unpublished information obtained or prepared by such person in such person's professional capacity in gathering, receiving or processing information for communication to the public, or the source of any information procured or obtained by such person, in any legal proceedings, trial or investigation:

1. Before any court, grand jury, coroner's inquest, jury or any officer thereof.
2. Before the legislature or any committee thereof.
3. Before any department, agency or commission of the state.
4. Before any local governing body or committee thereof, or any officer of a local government.

(Added to NRS by 1971, 786; A 1975, 502)

49.285 Public officer as witness. A public officer shall not be examined as a witness as to communications made to him in official confidence, when the public interests would suffer by the disclosure.

(Added to NRS by 1971, 786)

49.290 Counselor and pupil privilege.

1. As used in this section, "counselor" means a person who is regularly employed by a public or private school in this state as a counselor, psychologist or psychological examiner for the purpose of counseling pupils, and who holds a valid certificate, issued by the superintendent of public instruction authorizing the holder to engage in pupil counseling.

2. Except for communications relating to any criminal offense the punishment for which is death or life imprisonment, communications by a pupil to a counselor in the course of counseling or psychological examination are privileged communications, and a counselor shall not, without the consent of the pupil, be examined as a witness concerning any such communication in any civil or criminal action to which such pupil is a party.

(Added to NRS by 1973, 1640; A 1979, 1679)

JUDICIAL COUNCIL
 RULES

PROCEDURE IN
 JUVENILE CASES

JUDICIAL COUNCIL
 CIVIL PROCEDURE

49.291 Teacher and pupil privilege.

1. As used in this section, "teacher" means a person who is regularly employed by a public or private school in this state as a teacher or administrator and who holds a valid certificate issued by the superintendent of public instruction authorizing the holder to teach or perform administrative functions in schools.

2. Communications by a pupil to a teacher concerning the pupil's possession or use of drugs or alcoholic beverages made while the teacher was counseling or attempting to counsel such pupil are privileged communications and the teacher shall not, without the consent of the pupil, be examined as a witness concerning any such communication in any civil or criminal action to which the pupil is a party.

(Added to NRS by 1973, 1840; A 1979, 1639)

MISCELLANEOUS PRIVILEGES**49.295 Husband-wife privilege; limitations.**

1. Except as provided in subsections 2 and 3 and NRS 49.305:

(a) A husband cannot be examined as a witness for or against his wife without her consent, nor a wife for or against her husband without his consent.

(b) Neither a husband nor a wife can be examined, during the marriage or afterwards, without the consent of the other, as to any communication made by one to the other during marriage.

2. The provisions of subsection 1 do not apply to a:

(a) Civil proceeding brought by or on behalf of one spouse against the other spouse;

(b) Proceeding to commit or otherwise place his spouse, the property of his spouse or both the spouse and the property of the spouse under the control of another because of the alleged mental or physical condition of the spouse;

(c) Proceeding brought by or on behalf of a spouse to establish his competence;

(d) Proceeding in the juvenile court pursuant to chapter 62 of NRS; or

(e) Criminal proceeding in which one spouse is charged with:

(1) A crime against the person or the property of the other spouse or of a child of either, or of a child in the custody or control of either, whether such crime was committed before or during marriage.

(2) Bigamy or incest.

(3) A crime related to abandonment of a child or nonsupport of a wife or child.

3. The provisions of subsection 1 do not apply in any criminal proceeding to events which took place before the husband and wife were married.

(Added to NRS by 1971, 786; A 1977, 265; 1979, 460)

WITNESSES AND EVIDENCE

18. Argument as to fees paid
Prosecutor's argument, in rape prosecution, that defendant could pay ex-
perts larger fee than allowed by court was improper. *People v. Cowles* (1929) 224 N.W. 387, 246 Mich. 429.

600.2165 School teachers and employees; disclosing of students' communications

Sec. 2165. 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 or 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 is a minor, with the consent of his or her parent or legal guardian. P.A.1961, No. 236, § 2165, Eff. Jan. 1, 1963.

Historical Note

Prior Laws:
P.A.1915, No. 314, c. XVII, § 85.
P.A.1935, No. 41.
C.L.1948, § 617.85.

Cross References

Privilege,
Child welfare agencies and foster homes, records of and information concerning children, see § 722.104.
Clergy, see § 600.2156.
Physician-patient, see § 600.2157.
Privileged communications, proceedings before criminal trial, see § 767.5a.
Unlawful evidence, disposition or evidence in proceedings in probate court, juvenile division, see § 712A.23.

Law Review Commentaries

Privileged communication; extension of the privilege to communication involving agents. 50 Mich.L.Rev. 308 (1951).
Privileges in federal criminal evidence. Lester B. Orfield, 40 U.Detroit L.J. 403 (1963).
Right of the press to refuse to disclose confidential sources of information, 10 Wayne L.Rev. 599 (1964).
Scientific investigation and defendants' rights, controls created by legislation. 10 Wayne L.Rev. 599 (1964). 37, 42 (1958).

Library References

Witnesses § 196.
C.J.S. Witnesses § 254 et seq.
M.L.P. Witnesses § 62.
Michigan Court Rules Annotated, Honigman and Hawkins, 2d Ed., Rule 601.
Michigan Juvenile Court: Law and Practice, Downs (ICLE 1963) § 7-27, Appendix D.

mentality shall not, without the consent of the parent or guardian of such child being so taught or observed, testify in any civil action as to any information so obtained.

History: En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(6).

26-1-809. Confidential communications by student to employee of educational institution. A counselor, psychologist, nurse, or teacher employed by any educational institution cannot be examined as to communications made to him in confidence by a duly registered student of such institution. However, this provision shall not apply where consent has been given by the student, if not a minor, or, if he is a minor, by the student and his parent or legal guardian.

History: En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(7).

26-1-810. Confidential communications made to public officer. A public officer cannot be examined as to communications made to him in official confidence when the public interests would suffer by the disclosure.

History: En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(5).

Part 9

Media Confidentiality Act

26-1-901. Short title. This part shall be known and may be cited as the "Media Confidentiality Act".

History: En. Sec. 1, Ch. 195, L. 1943; R.C.M. 1947, 93-601-1; amd. Sec. 1, Ch. 285, L. 1979.

26-1-902. Extent of privilege. (1) Without his or its consent no person, including any newspaper, magazine, press association, news agency, news service, radio station, television station, or community antenna television service or any person connected with or employed by any of these for the purpose of gathering, writing, editing, or disseminating news may be examined as to or may be required to disclose any information obtained or prepared or the source of that information in any legal proceeding if the information was gathered, received, or processed in the course of his employment or its business.

(2) A person described in subsection (1) may not be adjudged in contempt by a judicial, legislative, administrative, or any other body having the power to issue subpoenas for refusing to disclose or produce the source of any

Sec. 10-154. Homes and transportation for teachers. Section 10-154 is repealed.

(1949 Rev. S. 1441; P.A. 78-218, S. 211.)

Sec. 10-154a. Professional communications between teacher or nurse and student. Surrender of physical evidence obtained from students. (a) As used in this section (1) "school" means a public school as defined in section 10-183b or a private elementary or secondary school attendance at which meets the requirements of section 10-184; (2) a "professional employee" means a person employed by a school who (A) holds a certificate from the state board of education, (B) is a member of a faculty where certification is not required, (C) is an administration officer of a school, or (D) is a registered nurse employed by or assigned to a school; (3) a "student" is a person enrolled in a school; (4) a "professional communication" is any communication made privately and in confidence by a student to a professional employee of such student's school in the course of the latter's employment.

(b) Any such professional employee shall not be required to disclose any information acquired through a professional communication with a student, when such information concerns alcohol or drug abuse or any alcoholic or drug problem of such student but if such employee obtains physical evidence from such student indicating that a crime has been or is being committed by such student, such employee shall be required to turn such evidence over to school administrators or law enforcement officials within two school days after receipt of such physical evidence, provided if such evidence is obtained less than two days before a school vacation or the end of a school year, such evidence shall be turned over within two calendar days after receipt thereof, excluding Saturdays, Sundays and holidays, and provided further in no such case shall such employee be required to disclose the name of the student from whom he obtained such evidence and such employee shall be immune from arrest and prosecution for the possession of such evidence obtained from such student.

(c) Any physical evidence surrendered to a school administration pursuant to subsection (b) of this section shall be turned over by such school administrator to the commissioner of consumer protection or the appropriate law enforcement agency within three school days after receipt of such physical evidence, for its proper disposition, provided if such evidence is obtained less than three days before a school vacation or the end of a school year, such evidence shall be turned over within three calendar days from receipt thereof, excluding Saturdays, Sundays and holidays.

(d) Any such professional employee who, in good faith, discloses or does not disclose, such professional communication, shall be immune from any liability, civil or criminal, which might otherwise be incurred or imposed, and shall have the same immunity with respect to any judicial proceeding which results from such disclosure.

(1971, P.A. 361, S. 1-3; 1972, P.A. 64, P.A. 78-29, 78-208, S. 29, 35; 78-218, S. 103.)

Sec. 10-155. Emergency teacher training program. The board of trustees for the state colleges may maintain an emergency training program to prepare graduates of approved four-year colleges and universities to teach in the elementary schools of the state. In carrying out such program the board may (a) establish

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9-203. Confidential relations and communications. — There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in the following cases:

1. A husband cannot be examined for or against his wife, without her consent, nor a wife for or against her husband, without his consent; nor can either, during the marriage or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other nor to a criminal action or proceeding for a crime committed by violence of one against the person of the other, nor does this exception apply to any case of physical injury to a child where the injury has been caused as a result of physical abuse or neglect by one or both of the parents.

2. An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment. The word client used herein shall be deemed to include a person, a corporation or an association.

3. A clergyman or priest cannot, without the consent of the person making the confession, be examined as to any confession made in his professional character in the course of discipline enjoined by the church to which he belongs.

4. A physician or surgeon cannot, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient, provided, however, that:

(A) Nothing herein contained shall be deemed to preclude physicians from reporting of and testifying at all cases of physical injury to children, where it appears the injury has been caused as a result of physical abuse or neglect by a parent, guardian or legal custodian of the child.

(B) After the death of a patient, in any action involving the validity of any will or other instrument executed, or claimed to have been executed, by him, conveying or transferring any real or personal property or incurring any financial obligation, such physician or surgeon may testify to the mental or physical condition of such patient and in so testifying may disclose information acquired by him concerning such patient which was necessary to enable him to prescribe or act for such deceased.

(C) That where any person or his heirs or representatives brings an action to recover damages for personal injuries or death, such action shall be deemed to constitute a consent by the person bringing such action that any physician who has prescribed for or treated said injured or deceased person and whose testimony is material in the action may testify.

(D) That if the patient be dead and during his life time had not given such consent, the bringing of an action by a beneficiary, assignee or payee or by the legal representative of the insured, to recover on any life, health or accident insurance policy, shall constitute a consent by such beneficiary, assignee, payee or legal representative to the testimony of any physician who attended the deceased.

5. A public officer cannot be examined as to communications made to him in official confidence, when the public interest would suffer by disclosure.

6. Any certificated counselor, psychologist or psychological examiner, duly appointed, regularly employed and designated in such capacity by any public or private school in this state for the purpose of counseling students, shall be immune from disclosing, without the consent of the student, any communication made by any student so counseled or examined in any civil or criminal action to which such student is a party. Such matters so communicated shall be privileged and protected against disclosure.

7. Any parent, guardian or legal custodian shall not be forced to disclose any communication made by their minor child or ward to them concerning matter in any civil or criminal action to which such child or ward is a party. Such matters so communicated shall be privileged and protected against disclosure; excepting, this section does not apply to a civil action or proceeding by one against the other nor to a criminal action or proceeding for a crime committed by violence of one against the person of the other, nor does this section apply to any case of physical injury to a minor child where the injury has been caused as a result of physical abuse or neglect by one or both of the parents, guardian or legal custodian. [C.C.P. 1881, § 899; R.S., R.C., & C.L., § 5958; C.S., § 7937; I.C.A., § 16-203; am. 1963, ch. 104, § 1, p. 324; am. 1963, ch. 122, § 1, p. 351; am. 1967, ch. 121, § 1, p. 265; am. 1971, ch. 36, § 1, p. 81; am. 1972, ch. 29, § 1, p. 42.]

Compiler's notes Section 2 of S.L. 1963, ch. 104 was repealed by S.L. 1975, ch. 242, § 1.

Section 2 of S.L. 1971, ch. 36 declared an emergency. Approved February 27, 1971.

Section 2 of S.L. 1972, ch. 29 declared an emergency retroactive to and including January 1, 1972. Approved February 28, 1972.

Cross ref. Competency of husband and wife in criminal proceedings, § 19-3002.

Party under examination not required to disclose privileged communications, I.R.C.P., Rule 43(b)(4).

Privileges of all witnesses, § 9-1302.

See notes, § 9-201.

See, to sec. ref. This section is referred to in § 9-201 and § 39-1312.

Cited in: *State v. Orr*, 53 Idaho 452, 24 P.2d 679 (1933); *Lebak v. Nelson*, 62 Idaho 96, 107 P.2d 1054 (1940); *Stelly v. Sunshine Mining Co.*, 62 Idaho 192, 109 P.2d 622 (1941).

ANALYSIS

Binding effect of evidence.

Communications with attorney.

—Waiver of privilege.

Communications with clergy.

Communications with physician.

—Existence of professional relationship.

—Waiver of privilege.

Construction.

Criminal actions.

Reporters.

Testimony of nurses.

Testimony of spouses.

—Waiver of privilege.

Binding Effect of Evidence.

A board, court, or jury must accept as true the positive uncontradicted testimony of a credible witness, unless inherently improbable or rendered improbable by facts and circumstances adduced in evidence. *Pierstorff v. Gray's Auto Shop*, 58 Idaho 438, 74 P.2d 171 (1937).

Communications with Attorney.

Third person who, by accident or by design of attorney, overhears confidential communications between client and attorney may be compelled to divulge what he so hears. *State v. Perry*, 4 Idaho 224, 38 P. 653 (1941).

Communications which pass between one who is merely conveyancer or friendly advisor of grantor or grantee in a deed are not privileged communications under this subdivision. *Lat. v. Haywood*, 12 Idaho 78, 85 P. 494 (1906).

When attorney is called as witness and declines to answer a question or produce letters or documents on the ground that same are privileged under provisions of subd. 2 of this section, burden is upon him to show sufficient facts and circumstances to establish the general privileged character of the communications or documents. The rule does not necessitate attorney disclosing the contents of documents or import of

GENERAL PRINCIPLES

622.1 Witnesses—who competent. Every human being of sufficient capacity to understand the obligation of an oath is a competent witness in all cases, except as otherwise declared. [C51,§2388; R60,§3978; C73,§3636; C97,§4601; C24, 27, 31, 35, 39,§11254; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.1]

622.2 Credibility. Facts which have heretofore caused the exclusion of testimony may still be shown for the purpose of lessening its credibility. [C51,§2389; R60,§3979; C73,§3637; C97,§4602; C24, 27, 31, 35, 39,§11255; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.2]

622.3 Interest. No person offered as a witness in any action or proceeding in any court, or before any officer acting judicially, shall be excluded by reason of his interests in the event of the action or proceeding, or because he is a party thereto, except as provided in this chapter. [R60,§3980; C73,§3638; C97,§4603; C24, 27, 31, 35, 39,§11256; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.3]

622.4 Transaction with person since deceased. No party to any action or proceeding, nor any person interested in the event thereof, nor any person from, through, or under whom any such party or interested person derives any interest or title by assignment or otherwise, and no husband or wife of any said party or person, shall be examined as a witness in regard to any personal transaction or communication between such witness and a person at the commencement of such examination deceased, mentally ill, or lunatic, against the executor, administrator, heir at law, next of kin, assignee, legatee, devisee, or survivor of such deceased person, or the assignee or guardian of such insane person or lunatic. [R60,§3982; C73,§3639; C97,§4604; C24, 27, 31, 35, 39,§11257; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.4]

C97, §4604, editorially divided
Referred to in §622.4

622.5 Exceptions. This prohibition shall not extend to any transaction or communication as to which any such executor, administrator, heir at law, next of kin, assignee, legatee, devisee, survivor, or guardian shall be examined on his own behalf, or as to which the testimony of such deceased or mentally ill person or lunatic shall be given in evidence. [R60,§3982; C73,§3639; C97,§4604; C24, 27, 31, 35, 39,§11258; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.5]

622.6 Depositions taken conditionally. Any person may have his own deposition, or that of any other person, read in evidence in all cases where his evidence would be incompetent by the provisions of section 622.4, by causing it to be taken, either before or after action is brought, during the lifetime or good mental health of the person against whose executor, heir, or other representative the same is to be used, if such deposition shall have been taken and filed ten days prior to the death or mental illness of such person. If after action is brought, such deposition may be taken in the usual manner; if before, then the same may be taken de bene esse, as provided by law.

[C73,§3640; C97,§4605; C24, 27, 31, 35, 39,§11259; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.6]

Perpetuating testimony, R.C.P. 160 et seq.
Referred to in §229.27

622.7 Husband or wife as witness. Neither husband nor wife shall in any case be a witness against the other, except:

1. In a criminal prosecution for a crime committed one against the other, or

2. In a civil action or proceeding one against the other, or

3. In a civil action by one against a third party for alienating the affections of the other, or

4. In any civil action brought by a judgment creditor against either the husband or the wife, to aside a conveyance of property from one to the other on the ground of want of consideration or fraud, to subject the same to the payment of his judgment. [C51,§2391; R60,§3983; C73,§3641; C97,§4606; S13,§4606; C24, 27, 31, 35, 39,§11260; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.7]

S13, §4606, editorially divided

Referred to in §222.74

Exception, §726.4

622.8 Witness for each other. In all civil and criminal cases the husband and wife may be witnesses for each other. [C51,§2391; R60,§3983; C73,§3641; C97,§4606; S13,§4606; C24, 27, 31, 35, 39,§11261; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.8]

622.9 Communications between husband and wife. Neither husband nor wife can be examined in any case as to any communication made by the one to the other while married, nor shall they, after the marriage relation ceases, be permitted to reveal in testimony any such communication made while the marriage subsisted. [C51,§2392; R60,§3984; C73,§3642; C97,§4607; C24, 27, 31, 35, 39,§11262; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.9]

Referred to in §222.74

622.10 Communications in professional confidence—exceptions—application to court. No practicing attorney, counselor, physician, surgeon, or the stenographer or confidential clerk of any such person who obtains such information by reason of his employment, minister of the gospel or priest of any denomination shall be allowed, in giving testimony, to disclose any confidential communication properly entrusted to him in his professional capacity, and necessary and proper to enable him to discharge the functions of his office according to the usual course of practice or discipline. Such prohibition shall not apply to cases where the person in whose favor the same is made waives the rights conferred; nor shall such prohibition apply, as the same relates to physicians or surgeons or to the stenographer or confidential clerk of any such physicians or surgeons, in a civil action to recover damages for personal injuries or wrongful death in which the condition of the person in whose favor such prohibition is made is an element or factor of the claim or defense of such person or of any party claiming through or under such person. Such evidence shall be admissible upon trial of the action only as it relates to the condition alleged. If an adverse party desires the oral deposition, either discovery or

evidentiary, of any such physician or surgeon to which such prohibition would otherwise apply or the stenographer or confidential clerk of any such physician or surgeon or desires to call any such physician or surgeon to which such prohibition would otherwise apply or the stenographer or confidential clerk of any such physician or surgeon as a witness at the trial of the action, he shall file an application with the court for permission to do so. The court upon hearing, which shall not be ex parte, shall grant such permission unless the court finds that the evidence sought does not relate to the condition alleged and shall fix a reasonable fee to be paid to such physician or surgeon by the party taking the deposition or calling the witness.

No qualified school guidance counselor, who has met the certification and approval standards of the department of public instruction as provided in section 257.25, subsection 9, who obtains information by reason of his employment as a qualified school guidance counselor shall be allowed, in giving testimony, to disclose any confidential communications properly entrusted to him by a pupil or his parent or guardian in his capacity as a qualified school guidance counselor and necessary and proper to enable him to perform his duties as a qualified school guidance counselor. [C51,§2393, 2394; R60,§3985, 3986; C73,§3643; C97,§4608; S13,§4608; C24, 27, 31, 35, 39,§11263; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.10]

Referred to in §1222.14, 25A.6, 514B.30

622.11 Public officers. A public officer cannot be examined as to communications made to him in official confidence, when the public interests would suffer by the disclosure. [C51,§2395; R60,§3987; C73,§3644; C97,§4609; C24, 27, 31, 35, 39,§11264; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.11]

622.12 Judge as witness. The judge of the court is a competent witness for either party, and may be sworn upon the trial. In such case it is in his discretion to order the trial to be postponed or suspended, and to take place before another judge. [C51,§2408; R60,§4005; C73,§3645; C97,§4610; C24, 27, 31, 35, 39, §11265; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.12]

622.13 Civil liability. No witness is excused from answering a question upon the mere ground that he would be thereby subjected to a civil liability. [C51,§2396; R60,§3988; C73,§3646; C97,§4611; C24, 27, 31, 35, 39,§11266; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.13]

622.14 to 622.16 Repealed by 65GA, ch 1272, §4.

622.17 Previous conviction. A witness may be interrogated as to his previous conviction for a felony. No other proof is competent, except the record thereof. [C51,§2398; R60,§3990; C73,§3648; C97,§4613; C24, 27, 31, 35, 39,§11270; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.17]

622.18 Moral character. The general moral character of a witness may be proved for the purpose of testing his credibility. [R60,§3991; C73,§3649; C97,§4614; C24, 27, 31, 35, 39,§11271; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.18]

622.19 Whole of a writing or conversation. When part of an act, declaration, conversation, or writing is given in evidence by one party, the whole on the same subject may be inquired into by the other; thus, when a letter is read, all other letters on the same subject between the same parties may be given. [C51,§2399; R60,§3992; C73,§3650; C97,§4615; C24, 27, 31, 35, 39, §11272; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.19]

C97, §4615, editorially divided

622.20 Detached acts, declarations, or conversations. When a detached act, declaration, conversation, or writing is given in evidence, any other act, declaration, conversation, or writing which is necessary to make it fully understood, or to explain the same, may also be given in evidence. [C51,§2399; R60,§3992; C73,§3650; C97,§4615; C24, 27, 31, 35, 39,§11273; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.20]

622.21 Writing and printing. When an instrument consists partly of written and partly of printed form, the former controls the latter, if the two are inconsistent. [C51,§2400; R60,§3993; C73,§3651; C97,§4616; C24, 27, 31, 35, 39,§11274; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.21]

622.22 Understanding of parties to agreement. When the terms of an agreement have been intended in a different sense by the parties to it, that sense is to prevail against either party in which he had reason to suppose the other understood it. [C51,§2401; R60,§3994; C73,§3652; C97,§4617; C24, 27, 31, 35, 39, §11275; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.22]

622.23 Historical and scientific works. Historical works, books of science or art, and published maps or charts, when made by persons indifferent between the parties, are presumptive evidence of facts of general notoriety or interest therein stated. [C51,§2402; R60,§3995; C73,§3653; C97,§4618; C24, 27, 31, 35, 39, §11276; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.23]

622.24 Subscribing witness—substitute proof. When a subscribing witness denies or does not recollect the execution of the instrument to which his name is subscribed as such witness, its execution may be proved by other evidence. [C51,§2403; R60,§3996; C73,§3654; C97,§4619; C24, 27, 31, 35, 39,§11277; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.24]

622.25 Handwriting. Evidence respecting handwriting may be given by experts, by comparison, or by comparison by the jury, with writings of the same person which are proved to be genuine. [C51,§2404; R60,§3997; C73,§3655; C97,§4620; C24, 27, 31, 35, 39, §11278; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.25]

622.26 Private writing—acknowledgment. Every private writing, except a last will and testament, after being acknowledged or proved and certified in the manner prescribed for the proof or acknowledgment of conveyances of real property, may be read in evidence without further proof. [C51,§2407; R60,§4000; C73,§3656; C97,§4621; C24, 27, 31, 35, 39,§11279; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§622.26]

622.27 Entries and writings of deceased person. The entries and other writings of a person deceased, who was in a position to know the facts therein stat-

dering relationships in a commercial world, can hardly be said to have delegated to the landlord an exclusive prerogative of the sovereign. As in *Flagg Bros.*, the statute at issue permits but does not compel creditor self-help.

In enacting the distraint procedures, the state only announced the circumstances under which a private individual may act. When a private person merely takes advantage of a self-help remedy recognized by the state, his actions are not attributable to the state.—Aldisert, J.

—CA 3; *Luria Brothers & Co., Inc. v. Allen*, 3/5/82.

Mass Media

COURT PROCEEDINGS—

Television station's First Amendment right to gather news is not violated by federal district court order that refused to allow broadcast coverage of lawsuit settlement negotiations, held in federal courthouse pursuant to court order, that were open to non-broadcast press coverage.

A television station seeks a writ of mandamus requiring a federal district judge to allow television broadcast coverage of negotiations undertaken in a federal courthouse to settle a lawsuit. The suit was filed by five registered voters against the Colorado governor and other state officials and sought to have a three-judge court appointed to formulate a redistricting plan for the state prior to the 1982 congressional election. The case was assigned to the respondent judge, who ordered the governor and members of the legislature to attempt to work out a compromise redistricting plan. When the negotiators reported their lack of progress, they were directed to a jury room and ordered to continue their efforts. Later in the day, negotiations continued in a magistrate's courtroom. The negotiations were unsuccessful and the lawsuit later went to trial. The trial court permitted the press to be present during the negotiations, but denied a request that television cameras be allowed in the meeting rooms, citing Rule 16 of the local rules of practice for the Colorado district courts, which prohibits the use of cameras in the courthouse.

The television station contends that the court's ruling violated its First Amendment right to gather news. The First Amendment does not guarantee the media a constitutional right to televise inside a courthouse, and courts may impose restrictions upon media access to courtrooms and courthouse premises when necessary to protect and facilitate the proper administration of the judicial system. It is not necessary to consider whether application of Rule 16 could, under different circumstances, infringe upon the media's First Amendment rights. It is

enough to conclude that it did not do so in this case.

The television station was not denied access to the meetings. Its representative was free to attend, take notes, and disseminate any information obtained. The room in which the initial meeting was held was small and space was limited. Jury trials were taking place elsewhere in the courtroom. Under these circumstances, the potential for disruption of the meeting and other judicial proceedings outweighed any benefit to the television station and the public from a visual presentation of the meeting room.—Seymour, J.

—CA 10; *Combined Communications Corp. v. Finesilver*, 3/17/82.

PRIVILEGE—

Journalists enjoy qualified common law privilege against disclosure of confidential sources in Washington civil actions, and, if reporter's interest in nondisclosure is supported by need to preserve confidentiality, this privilege can only be overcome by showing that underlying claim is meritorious, that information sought is necessary to such claim, and that reasonable effort has been made to acquire information by other means.

A newspaper defendant in a libel action was ordered by the trial court to answer certain pre-trial interrogatories concerning its confidential sources for the allegedly libelous article. Plaintiff contends that there is no First Amendment privilege against disclosure of confidential sources, and that the creation of any privilege is a matter for the legislature, not the courts.

Even though some states have found a qualified First Amendment privilege and some have not, this is hardly enough to justify venturing onto the uncertain terrain of federal constitutional interpretation if it is not necessary to do so. Where a case is not governed by statute, as is the circumstance here, it is appropriate for a court to apply the common law to determine the outcome of the case.

Testimonial privilege has not been favored in the common law. Four fundamental conditions have been seen as necessary to establish such a privilege: first, the communication must originate in a confidence; second, the element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties; third, the relation must be one which in the opinion of the community ought to be fostered; and, fourth, the injury that would be caused by disclosure must be greater than the benefit gained.

The first two conditions are normally present. The third, while perhaps not present in an earlier time, does exist with considerable force today. Given both the complex and diffuse nature of modern society, and the increasing need for journalists to

convey information to citizens, this relationship is one which ought to be fostered. As to the fourth condition, the court believes that the injury from failing to establish the privilege would be greater than the benefit to be gained by requiring the testimony in civil litigation.

This qualified privilege can be defeated, if the trial court finds that three standards have been met. First, there must be a showing that the claim is meritorious, that it is not frivolous or brought for the purpose of harassment. Second, the information sought must be necessary or critical to the cause of action or defense pleaded. Third, a reasonable effort must be made to acquire the desired information by other means. Even when the information is critical and necessary to the plaintiff's case, the plaintiff must exhaust reasonably available alternative sources before a reporter can be compelled to disclose. Finally, in addition to considering these standards, the court must also find that the interest of the reporter in nondisclosure is supported by a need to preserve confidentiality. The court should look to how the reporter received the information and whether the source has a reasonable expectation of confidentiality. This requirement is needed to prevent journalists from invoking the protection of their nameless sources when no confidential relationship need be protected.—Dolliver, J.

Concurrence. The holding of this case should be based on the First Amendment, not on the common law. No purpose is served by deciding the case on common law grounds to avoid recognition of the constitutional interests being balanced.—Utter, J.

Dissent. If some kind of shield law for reporters is necessary under present circumstances, it must be created. The legislature, consisting of some 147 members, is better able to determine the need for creating such a shield law than is this court.—Rosellini and Dore, JJ.

—Wash Sup Ct; *Senear v. Daily Journal-American*, 3/4/82.

Product Safety and Liability

STRICT LIABILITY—

Manufacturer is strictly liable in Ohio for defectively designed product if product is more dangerous than ordinary consumer would expect or if benefits of challenged design do not outweigh risk inherent in such design.

A punch press operator brought a product liability action against the machine manufacturer after she injured her hand by accidentally activating the press while trying to reposition the foot switch.

Both parties assert that *Temple v. Wean United, Inc.*, 50 OhioSt2d 317 (1977), is dispositive of this case. There the plaintiff, who was injured while operating a punch

FAIRBANKS NORTH STAR BOROUGH SCHOOL DISTRICT

P.O. Box 1250, Fairbanks, Alaska 99707-1250

(907) 452-2000



KENNETH STEPHEN BURNLEY

Superintendent of Schools

March 16, 1982

Senator Terry Stimson
Pouch V
Juneau, Alaska 99811

Dear Terry,

There has been a very vocal group of parents in Fairbanks who have been concerned that their elementary school aged children will be influenced away from family beliefs. Their main concerns have involved the elementary counseling program; however, their concerns have included teachers as well. It became such a public issue in Fairbanks that Fairbanks area legislators may be concerned about the political implications of this legislation at this time. There was no concern in the junior and senior high area. As child abuse is already a mandated non-confidential area you may want to consider addressing your legislation to age twelve and above.

As a professional counselor I support this legislation and am sharing the above information out of concern for your bills' success.

Sincerely,

Paula Esch, District-Wide Counselor

PE/bg

KENAI JUNIOR HIGH SCHOOL

A part of KENAI PENINSULA BOROUGH SCHOOL DISTRICT
KENAI, ALASKA 99611

file

March 23, 1982

Senator Terry Stimson
Alaska State Senate
Pouch V
Juneau, Alaska 99811

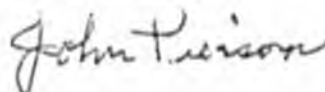
Dear Senator Stimson:

I have read your bill SB 437, and am very much in favor of it. I have also written to Senator Parr asking for his support.

Will appreciate your support of SB 813 and/or HE 698.

Thank you.

Sincerely,



John Pierson
Counselor

MAR 26 1982

KENAI PENINSULA BOROUGH SCHOOL DISTRICT

PUPIL PERSONNEL SERVICES



Special Services

Nursing Services

Counseling

Media

March 22, 1982

Honorable Terry Stimson, Senator
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Stimson:

Thank you for sending me a copy of Senate Bill 437. I strongly support your contentions in this bill. Hopefully, this piece of legislation will foster more open and frank discussions between students and teachers or counselors.

Sincerely,

KRIS ROGERS

Kris Rogers,
Director

KR/cbj

cc: School Counselors

file
MAR 17 1982

P. O. BOX 179 SITKA, ALASKA 99835
March 15, 1982

Louis J. Licari
Acting Superintendent

Terry Stimson
State Senator
Pouch V
Juneau, AK 99811

Dear Senator Stimson:

Thank you for the copy of Senate Bill No. 437. We are sorry that you were not able to be present at our last Alaska School Counselor's Association board meeting to discuss it with us.

The counselors with whom I have conferred all seem to be in strong agreement with this bill, and we certainly lend you our full support.

The only suggestion I would offer is that Section 09.25.320, DEFINITION, a "teacher" be amended to include not only public school teachers, but private or parochial school teachers as well.

Sincerely yours,

Marvin Krause
Marvin J. Krause, Counselor
Sitka High School

*Certificated Teacher
regardless of private
or parochial -*