INTRODUCTION:¹

Public school personnel need to be sensitive to and mindful of the rights of students, parents and colleagues with respect to “privacy rights,” “confidentiality” and “privileged communications.”

School personnel are in a position to obtain information of a highly personal nature which pertains to students, employees and their families. A few examples might help to illustrate the sensitivity of the information involved:

- a principal or school secretary in enrolling a new student becomes aware of the details of a divorce decree;
- a teacher overhears two students talking about their parents’ drinking habits or use of illegal substances;
- a teacher gives parents a class list which contains the parents’ names, addresses and telephone numbers;
- a guidance counselor learns of a student’s pregnancy and contemplated abortion during the course of a counseling session;
- a guidance counselor learns of a student’s off-campus use of alcohol or illegal drugs;
- a teacher’s gradebook is shared with another teacher;
- a school nurse receives a physician’s note regarding a child’s medical condition
- a payroll clerk processes a wage garnishment order relative to a school bus driver;
- a student makes a life threatening statement relative to another student during the course of a counseling or therapy session.

¹ This School Law Note was prepared by Robert G. Fraser of Stoneman, Chandler & Miller LLP. It is not intended to be legal advice. If you require legal counsel relative to a specific matter, you may contact Attorney Fraser at 617-542-6789.
Each of these scenarios and countless others arise on a daily basis in the school setting and they potentially implicate the privacy rights of students, employees and their families. The inappropriate handling of the information involved can give rise to a violation of the legal rights of the subject of the information and result in costly litigation for the school district. School officials should be vigilant with regard to protecting the individual privacy rights in the school setting.

Confidentiality vs. Privileged Communications

The terms “confidentiality” and “privileged communication” are not synonymous and should not be confused by educators. Confidentiality concerns matters of communication outside of a legal proceeding. A “privileged communication” on the other hand is one which has been legally recognized either at common law or by statute. Privileged communications are those which are legally protected from disclosure in any setting.

Confidential communications may be governed by ethical principles and/or statutes, regulation, or policies which have been lawfully promulgated by someone or some entity having the legal authority to do so. For example, the Family Educational Rights and Privacy Act and Regulations promulgated by the Massachusetts Department of Education govern the confidentiality of student records made or received by school department employees in the performance of their duties. An employer may promulgate rules regarding confidentiality with respect to information which an employee obtains as a result of the employer-employee relationship. So long as they do not violate legally recognized privileged communications, an employer’s policies or rules may regulate the disclosure of information obtained in the employer/employee relationship. Employees owe a duty of loyalty to their employers which includes maintaining those confidences which the employer wants maintained. Unless otherwise required to do so by law or as a matter of public policy, the breach of said duty may lead to disciplinary action including the possibility of dismissal.