

C-16

***Policy Regarding the Use or Referral of
Counselors at Schools and Parishes
(02/02)***

THE ARCHDIOCESE OF SAN FRANCISCO**POLICY REGARDING THE USE OR REFERRAL OF COUNSELORS
AT SCHOOLS AND PARISHES****INTRODUCTION**

In view of the increasingly complex society in which we live, school principals, teachers, parish priests, and directors of various parish-based ministries are more aware than ever that they oftentimes lack the expertise to assist those they serve who face difficult psychological or emotional issues. As such, schools and parishes look to professionally trained counselors to provide assistance when the need arises. In past years, a number of schools contracted with Catholic Charities to provide full- or part-time on-site student counselors. Regrettably, however, this Catholic Charities program was discontinued. In a few instances, schools have hired their own counselor as a paid employee and in other cases have made arrangements with independent contractors to provide school counseling services on-site. Sometimes, because student needs and problems are often interwoven with various family issues, parents and/or siblings of students have been incorporated into the school counseling program.

In some cases, counseling also has been arranged for parishioners who do not have a student in the school. For example, parish priests providing spiritual counseling to parishioners may recognize a need for professional psychological help. In the past, the priests' responses have ranged from recommending professional counseling without reference to a specific counselor(s), to recommending a specific counselor whom the priest knows has had success in treating other parishioners (including counselors associated with Catholic Charities' non-school-related counseling program), to direct referrals to the school counselor (who may have met with the parishioner either on or off the parish grounds as part of their "private practice", with the counselor's fees, in some cases, being paid in whole or in part by the parish).

In view of the various paths that have been taken in connection with school and parish counseling issues, a number of questions have arisen, such as the following:

- Should there be an Archdiocesan policy on the qualifications and role of the school counselor?
- Should schools contract with independent contractors to provide counseling services or should they hire them as employees?
- What role will the reorganized Catholic Charities/CYO Corporation play in the counseling arena in light of that entity's renewed commitment to serving the needs of the schools and parishes?
- Should a particular "consent" form be used?
- Should counseling records remain with the school or with the counselor?

- Does Archdiocesan insurance cover the errors and omissions of counselors retained by the school?
- What is the proper relationship between a spiritual adviser, a parishioner, and someone who provides professional counseling to that parishioner at the recommendation of the spiritual adviser? (A clear distinction and understanding must be made between spiritual direction and psychotherapy.)
- Is it appropriate for employees and independent contractors who serve as counselors to do "moonlighting" work on school/parish grounds?

In order to answer these and other related questions, the following policies and procedures have been adopted which shall be applicable to schools and parishes owned by the Archdiocese:

I. COUNSELORS - SCHOOLS

Schools shall have the discretion to hire a qualified counselor as a full- or part-time employee or to retain the services of an independent contractor to fulfill that role. In either case, the qualifications and credentials of the counselor must be cleared with the Department of Catholic Schools, which will be aided by personnel from the Catholic Charities/CYO Behavioral Healthcare Program. If, after obtaining clearance, a decision is made to hire the individual as an employee, then the standard Archdiocesan contract for non-teachers, available through the Department of Catholic Schools, shall be utilized. If the school wishes to hire the individual as an independent contractor, then the individual must meet the legal qualifications for independent contractor status (see attached "Independent Contractor Checklist" document) and must sign the standard Archdiocesan independent contractor agreement available through the Department of Catholic Schools. The administration of the school, in consultation with the counselor, shall use its discretion in determining when the family of a student counselee should be included as part of the school's free counseling program. If, after the school has hired a counselor, it receives complaints from parents, guardians, etc., concerning the qualifications of, or treatment provided by, the counselor, then the complaint shall be channeled to the Department of Catholic Schools, which in turn will refer the issue to experts within the Catholic Charities/CYO Behavioral Healthcare Program. These experts will then consult with the counselor involved prior to responding to the complaining party. These experts will also be responsible, in general, for assuring the ongoing licensure, quality, accountability, and supervision of the independent contractors and employees serving as school counselors.

"Moonlighting" on school/parish grounds by school counselors is prohibited. That is, if counseling outside the context of free student/family counseling directly relating to the needs and problems of a particular student is requested or recommended, the individual(s) should be informed that such counseling is not part of the school/parish program and any private counseling arrangements must take place off the parish/school grounds.

Anyone using a counseling program under the auspices of a school shall sign the applicable Archdiocesan Consent form (copies attached).

Counseling records pertaining to a school counseling program shall be maintained by the employee or independent contractor hired to provide the counseling services. However,

the records shall remain the property of the school and be located at the school site in locked and secured files to ensure confidentiality.

The law strictly protects the confidentiality of all medical information and sets out precisely the circumstances under which any counselor may share information gleaned from a patient and how disclosure may be authorized. Among other things, disclosure may be authorized only if the subject has been told the specific information to be shared, the persons sharing it and with whom it is shared, and the uses to which it may be put. An authorization of disclosure must state that it is for a specific time only. Because the manner of authorization is so specific, failure to have consent forms duly signed before any treatment, or any deviation from the consent forms attached to this policy, may invalidate any such authorization.

Moreover, the law provides that every health care provider (which in this case means any school that provides counseling services) must "create, maintain, preserve, store, abandon, destroy or dispose of" all confidential medical information in a manner that preserves its confidentiality. This means at a minimum that information must be talked about only among persons authorized to hear it; if in writing or on a computer, it must be stored only in places where access is limited to those persons authorized to see it; and it must be disposed of so that no unauthorized persons (*e.g.*, secretaries, janitors, non-authorized teachers, garbage collectors) might see it.

Any school that negligently discloses confidential information without a valid authorization, or that fails to maintain and dispose of information in a way that preserves confidentiality, may be subject to civil liability and the persons who authorize or engage in that negligent behavior may be guilty of a crime.

The Archdiocesan insurance program covers errors and omissions occasioned by counselors providing services to a school counseling program. However, counselors hired as independent counselors shall maintain acceptable levels of professional malpractice insurance and evidence of such coverage shall be attached to the independent contractor agreement.

II. COUNSELORS - PARISHES

Parishes shall not get involved in providing professional counseling services outside the school counselor context. Rather, when there is a recognized need for a parishioner to receive professional counseling, the parishioner should be advised to obtain private, professional counseling separate and distinct from the parish and school. To facilitate this process, the parish might provide a list of known counselors to the parishioner and/or refer the individual to the Catholic Charities/CYO Behavioral Healthcare Program, which has a sliding-scale fee payment system based on one's ability to pay. No private counselor may conduct a private practice on parish grounds.

Attachments:

Archdiocesan Consent Forms for:

- *School Counseling Services - Custodial Parent/Legal Guardian*
- *School Counseling Services - Emancipated Minor/Adult*

Independent Contractor Checklist

THE ARCHDIOCESE OF SAN FRANCISCO

**CONSENT FORM FOR SCHOOL COUNSELING SERVICES
(Custodial Parent/Legal Guardian)**

I am the custodial parent/legal guardian of _____ (“My Child”) and I hereby give my consent for My Child to receive counseling services through _____ School (the “School”). My Child is not married, is not a member of the United States Armed Forces, and has not received a Declaration of Emancipation from any Court of Law.

I understand that counseling services offered through the School are primarily short-term, temporary services aimed at the more effective education and socialization of My Child within the School community, and to provide the means for teachers and the School Administration to serve My Child and the School community more effectively. These services may involve the individual participation of My Child, or the participation of My Child in conjunction with family, teacher(s) and/or the School Administration. I understand that these services are not intended as a substitute for emergency psychological intervention, nor do they take the place of permanent, long-term, or comprehensive psychological counseling, therapy or medication, which are not the responsibility of the School. I acknowledge that it is my sole responsibility to determine whether additional or different services are necessary, and whether to seek them for My Child.

I have the right to withdraw this consent by written notice to the School.

Date: _____ Parent/Guardian’s Signature: _____

Relationship to Child: _____

AUTHORIZATION OF DISCLOSURE

Because these School Counseling Services are primarily intended to serve My Child as a member of the School Community, in addition to circumstances otherwise allowed or required by law, I authorize the School counselor, in his or her discretion, to share any information, diagnosis or recommendation derived from these services, and only such information, with me or another parent or legal guardian of My Child, My Child’s teacher(s), the School Principal or other School Administrators. Such information will be used only for the purposes of facilitating the education or socialization of My Child in the School community. This authorization shall remain valid only until _____. I have the right to withdraw this authorization by written notice to the School.

I understand that I have the right to receive a true copy of this authorization. By my signature, I acknowledge that a true copy of this authorization has been received by me.

Date: _____ Parent/Guardian’s Signature: _____

Relationship to Child: _____

PLEASE KEEP A COPY OF THIS CONSENT FORM FOR YOUR RECORDS

THE ARCHDIOCESE OF SAN FRANCISCO

**CONSENT FORM FOR SCHOOL COUNSELING SERVICES
(Emancipated Minor/Adult Student)**

I, _____, am a student at
_____ School (the "School"). I am either:

- 1) more than 18 years old,
- 2) married,
- 3) a member of the United States Armed Forces, or
- 4) the recipient of a Declaration of Emancipation from a Court of Law.

I wish to engage in School Counseling Services offered by the School. I understand that counseling services offered through the School are primarily short-term, temporary services aimed at the more effective education and socialization of myself within the School community, and to provide the means for teachers and the School Administration to serve the School community and me more effectively. These services may involve my individual participation, or my participation in conjunction with family, teacher(s) and/or the School Administration. I understand that these services are not intended as a substitute for emergency psychological intervention, nor do they take the place of permanent, long-term, or comprehensive psychological counseling, therapy or medication, which are not the responsibility of the School. I acknowledge that it is my sole responsibility to determine whether additional or different services are necessary, and whether to seek them.

I have the right to withdraw this consent by written notice to the School.

Date: _____ Student's Signature: _____

AUTHORIZATION OF DISCLOSURE

Because these School Counseling Services are primarily intended to serve me as a member of the School Community, in addition to circumstances otherwise allowed or required by law, I authorize the School counselor, in his or her discretion, to share any information, diagnosis or recommendation derived from these services, and only such information, with my teacher(s), the School Principal or other School Administrators. Such information will be used only for the purposes of facilitating my education or socialization in the School community. This authorization shall remain valid only until _____. I have the right to withdraw this authorization by written notice to the School.

I understand that I have the right to receive a true copy of this authorization. By my signature, I acknowledge that a true copy of this authorization has been received by me.

Date: _____ Student's Signature: _____

PLEASE KEEP A COPY OF THIS CONSENT FORM FOR YOUR RECORDS

THE ARCHDIOCESE OF SAN FRANCISCO

INDEPENDENT CONTRACTOR CHECKLIST

Name: _____ Date: _____

Job: _____

	Yes	No
1) Is the work an integral and regular part of the business of the beneficiary of the services?	_____	_____
2) Is the work on-going in nature rather than brief, focused and unique?	_____	_____
3) Is the bulk of the work skilled and specialized?	_____	_____
4) Does the worker have an occupation or business <u>distinct</u> from that of the employer?	_____	_____
Is there <u>evidence</u> of a business license? <i>(If yes, please attach copy)</i>	_____	_____
Is there <u>evidence</u> of a business card? <i>(If yes, please attach copy)</i>	_____	_____
Is there <u>evidence</u> of a yellow page listing? <i>(If yes, please attach copy)</i>	_____	_____
Is there <u>evidence</u> of professional liability insurance? <i>(If yes, please attach copy)</i>	_____	_____
Is there <u>evidence</u> of multiple and <u>current</u> clients? <i>(If yes, please attach names)</i>	_____	_____
Is there <u>evidence</u> of multiple associates/employees working for this individual's business? <i>(If yes, please attach names)</i>	_____	_____
Is there <u>evidence</u> of an IRS Form 938P? <i>(If yes, please attach copy from previous year)</i>	_____	_____
5) Is the work significantly different from work being performed by other Archdiocesan employees?	_____	_____
6) What amount of time, if any, does the person spend working <u>at the Archdiocese</u> and what, if any, <u>space or materials</u> of the Archdiocese are used, and what, if any, significant profit/loss risks (eg. unreimbursed overhead) are involved?	_____	_____
7) Does the employer have the <u>right</u> to control the manner and means of accomplishing the desired results (even if that right might not be exercised)?	_____	_____
8) What percentage of the individual's <u>current</u> "business" is for the Archdiocese?	_____	%
9) Is the person paid to complete a set job at a set fee without regard to the number of hours ultimately worked on the project?	_____	_____
10) Does the worker set his/her own hours using his/her own discretion?	_____	_____

Note - The above items reflect most of the common law factors considered by the I.R.S. etc. in determining whether or not a person is a bonafide independent contractor. Misclassification can result in assessments for back taxes and penalties. The I.R.S. does not weigh the answers equally and a "Yes" or "No" to a single item or two is not conclusive as to the outcome. However, "Yes" answers to items 1, 2 & 7, and "No" to items 3, 4, 5, 9 & 10 along with a high percentage in item 8 are strong indicators of employee status.