

## School Counseling

### Avoiding Liability Bulletin - February 2011

... The laws dealing with school counseling and confidentiality in California are now being examined by the Office of the Attorney General, which is expected to write an Opinion this year regarding an interesting question that has been asked by Senator Mark Wyland. The question was as follows: Is a school counselor required to disclose a student's pregnancy to the student's parents if the counselor believes that disclosure is necessary to prevent harm to the student? Also asked was whether a school district and counselor can be held liable for failure to make disclosure to parents of such pregnancy-related or abortion-related information when the student suffers harm that could have been averted by the parents.

While Opinions of the Attorney General do not constitute controlling legal authority regarding the interpretation of the law, they are entitled to great weight and respect by the courts. I fully expect that after the opinion is issued, there will be a need to amend the statute that will be interpreted in the opinion. The statute involved is found in the Education Code. It differs from the laws of confidentiality generally applicable to licensed mental health professionals who are treating children (outside of the school setting) with or without parental consent. It is a poorly drafted statute and it is not particularly protective of confidentiality. For example, it would allow a school counselor to report information to a principal or parent when the pupil indicates to the school counselor that a crime involving substantial property losses has occurred in the past. There are other problems with the statute, including the provision relevant to the opinion to be issued, which talks of a "clear and present danger to the health, safety, or welfare of the pupil." Such language can be broadly interpreted to allow many disclosures. It is my educated guess that although the statute is worded poorly and can be interpreted as a mandate to disclose, the Attorney General will opine that the school counselor is not required to make a disclosure to the parents. The Attorney General's Office will likely analyze how such a matter would be handled in a private practice situation, where the minor is being treated with and without parental consent. The California statute to be interpreted is found in Section 49602(c) of the Education Code.

**Author:**  
Richard Leslie