



# PROTECTING SCHOOL COUNSELORS AND THEIR DOCUMENTATION

# THE QUIET COMPLEXITY OF COUNSELING NOTES

School counselors support students through complicated academic, emotional, and social challenges, all while juggling confidentiality, compliance, and communication with other school staff and families. In this role, documentation is both a practical necessity and a potential legal vulnerability.

As student support needs increase and family engagement becomes more active and legally complex, the way counselors record their work matters more than ever. Without clear boundaries between formal documentation and personal notes, school counselors find themselves navigating difficult questions about privacy, subpoenas, and discoverability.

The following guidance explores the legal frameworks surrounding counseling documentation, including the difference between education records and sole possession records, how courts view each form of documentation, and why an EHR system can be a powerful tool for protecting both counselors and the students they serve.

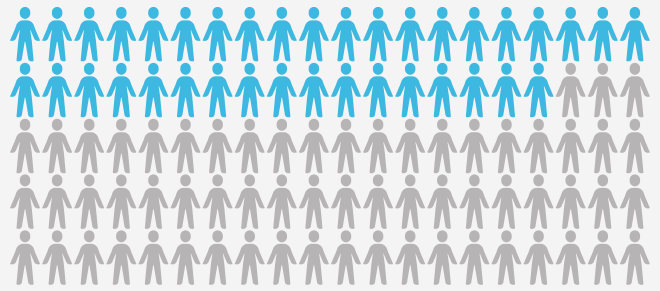


## LEGAL RISK AND ETHICAL RESPONSIBILITY IN SCHOOL COUNSELING

School counselors play a critical role in supporting students' mental health, academic success, and social-emotional development. Their work is grounded in trust and confidentiality, but it's also subject to laws, policies, and accountability measures. This dual responsibility can create a challenging landscape, especially when it comes to documentation. Counselors are expected to take notes, record interventions, and track concerns, yet those same records can later become part of legal proceedings or public scrutiny.

When documentation practices are inconsistent, counselors face real risks. Subpoenas and legal discovery can arise in a range of situations, from student discipline cases to custody disputes or mental health crises. Families may question what was documented, when, and how. Storing sensitive notes in personal notebooks, emails, or shared drives can inadvertently violate FERPA or leave counselors exposed to liability.

According to a 2022 national survey conducted by the National Center for School Counseling Practice, 37% of School Counselors reported having received or been involved in a legal request for student documentation within the previous three years.



This underscores how common these legal pressures are, and how important it is to have clear systems in place.

## WHAT COUNTS AS AN EDUCATION RECORD? UNDERSTANDING FERPA

The Family Educational Rights and Privacy Act (FERPA) provides the foundation for how schools must manage and protect student records. FERPA defines education records as those that directly relate to a student and are maintained by an educational agency or institution, or by a party acting on its behalf. For school counselors, this includes nearly all documentation that is shared with others or maintained as part of the student's official record.

Any counseling note that is stored in an official system, emailed to a colleague, or used to inform support services becomes part of the education record, and is therefore protected under FERPA. This means it can be requested by parents of students under 18 and is subject to disclosure via subpoena or court order.

This legal definition underscores the importance of where and how

counseling notes are stored. A secure Electronic Health Record (EHR) system helps ensure that formal notes are maintained in compliance with FERPA, providing clarity about what constitutes part of the official education record.

## **THE SOLE POSSESSION EXCEPTION**

FERPA includes a narrow but important exception for “sole possession records.” These are notes kept entirely private by the counselor, used only as a personal memory aid, and never shared with others or stored in an official system.

For counselors, understanding this boundary is essential. To qualify for this exception, notes must meet all three of these criteria:

- Stored privately (such as in a locked drawer),
- Used only as an informal memory aid, and
- Never shared, referenced in meetings, or shown to others.

The temptation to use a personal notebook as an all-purpose record is understandable, especially in the absence of a centralized documentation system. When counselors are juggling back-to-back student meetings, phone calls with families, and unexpected crises, jotting everything down in one place can feel like the most efficient option. But over

time, this habit can create confusion about what’s official and what’s personal, blurring the line between protected memory aids and discoverable education records. Without clear boundaries, even well-intentioned notes can become a legal gray area if those are later subpoenaed.

A centralized record system draws a clear line between formal records subject to FERPA and private notes meant solely for a school counselor’s use.

## **WHY USING AN EHR PLATFORM SUPPORTS LEGAL AND ETHICAL BEST PRACTICES**

An EHR platform does more than improve efficiency, it creates a structure that aligns with legal and ethical standards. By centralizing counseling documentation in a secure system, schools can ensure that records are maintained properly and that personal memory aids remain distinct and protected.

Key benefits of using an EHR system include:

- Standardization of what qualifies as an education record,
- Role-based access controls to ensure only appropriate staff can view specific information,
- Time-stamped entries that show when documentation was created or updated,



- Clear audit trails for legal review or compliance checks,
- A reliable mechanism for keeping personal notes out of the formal record.

These features reduce ambiguity, improve coordination, and give counselors confidence that they are documenting appropriately.

## **WHAT HAPPENS WHEN NOTES ARE SUBPOENAED?**

Under FERPA, education records must be disclosed in response to a valid court order. If a counselor writes a note in a personal notebook and does not share it with anyone, many believe that it is no longer discoverable, but this is not the case. The “sole possession” exception is extremely narrow and frequently misunderstood.

According to the Family Policy Compliance Office (FPCO), which is in charge of enforcing FERPA, notes are only protected under this exception if they are used solely as a personal memory aid, never shared, and not used to create or inform official documentation. Even notes kept in a locked drawer or private desk may be subject to disclosure if they include details about student behavior, performance, or services.

Detailed or evaluative notes, especially those used to prepare reports, document student progress, or inform

decisions, almost always qualify as education records, even if they’re handwritten and kept private. In short, if the note contains meaningful information about a student and is maintained by the school employee, there’s a strong chance it is legally discoverable.

Maintaining clear documentation in an EHR not only keeps records compliant, it helps draw a clear boundary between what is part of the official student record and what, if anything, is not.

## **RECOMMENDATIONS FOR SCHOOL COUNSELORS AND ADMINISTRATORS**

To strengthen legal protections and uphold ethical practices, schools can take the following steps:

- Implement a secure, centralized EHR system for student support documentation.
- Train all counselors on FERPA, including the definition of education records and the sole possession exception.
- Establish clear policies that differentiate between official and personal notes.
- Retain legal counsel to develop appropriate subpoena response procedures.
- Encourage best practices in note-taking that reinforce the distinction between memory aids and formal documentation.

## CONCLUSION

Documentation is no longer a behind-the-scenes administrative task, it is a core part of school counseling practice. As scrutiny increases and student needs become more complex, the systems used to capture that documentation matter. An EHR platform provides the structure, security, and compliance necessary to protect both students and the counselors who support them.

By maintaining a clear boundary between formal documentation and sole possession notes, counselors can fulfill their professional duties with clarity and confidence, supporting students more effectively while reducing personal and institutional risk.

## REFERENCES

[Family Educational Rights and Privacy Act \(FERPA\), 20 U.S.C. §1232g; 34 CFR Part 99](#)

[Owasso Independent School District v. Falvo, 534 U.S. 426 \(2002\)](#)

[U.S. Department of Education, FERPA Guidance](#)

[School-Based Health Alliance, FERPA/HIPAA FAQs](#)

[National Center for School Counseling Practice, 2022](#)

[FERPA: Beware of reliance on the “sole-possession” exception](#)

