GUIDELINE

Confidentiality and adolescents

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<tr>
<th>Scope (Staff):</th>
<th>School Health</th>
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<td>Scope (Area):</td>
<td>CACH, WACHS</td>
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This document should be read in conjunction with this DISCLAIMER

Aim

This policy informs community health nurses working with adolescents in school settings of their responsibilities regarding duty of confidentiality, duty of care and sharing information.

Risk

In many adolescent health care situations legal duties can be conflicting and unclear. Knowledge, skill and professional judgement is required to address legal and ethical considerations, and to strike a balance between protecting individuals from harm and the need to protect personal information.

Background

Duty of confidentiality

Health professionals owe a duty to maintain the confidentiality of all information obtained in the course of providing health care to clients of any age. The duty means that information cannot generally be released to others without the client’s permission (consent) or, where ‘incompetent’, the permission of the client’s legal guardian (usually a parent). This is a fundamental legal duty of health professionals.

Confidentiality is important in establishing and maintaining a relationship of trust between a health professional and client, particularly adolescent clients. Health concerns which are of most importance to young people often involve sensitive psychosocial and/or sexual health issues. Confidentiality is highly valued among young people, and the fear of a breach of confidentiality often prevents young people from seeking help.

Balancing the duty of confidentiality and the duty of care

Notwithstanding the duty of confidentiality, it is often in the best interests of a young person to have some information shared with certain other third parties who are in a position to provide support and care, such as parents or guardians. There is a grey area between the duty of confidentiality and the duty of care for adolescents, which requires professional skill, knowledge and judgement.

Working with adolescents requires careful consideration of the developmental stage of the individual, their circumstances and their competence to manage a particular issue. Competence is the legal term used to describe the capacity or capability of an individual to make decisions on his or her own behalf. In each situation, health professionals must consider the competence of an individual in relation to, the nature of the health issue(s), the risks to the individual (or others), the individual’s understanding of the situation; the
family and social context, and the health care requirements or options. Decisions about how to proceed with confidentiality, health care and sharing of information will vary for each situation. See Appendix A for information about the legal competence of minors.

**Conditional confidentiality**

When working with adolescents, the concept of conditional confidentiality is important. It is highly recommended that early in a consultation with an adolescent, health professionals provide a simple explanation about certain information that may need to be shared with other people, including situations when there is a serious risk of harm to the young person or to others. In this, adolescents can be assured that their personal information is protected and maintained within certain parameters.

Effective communication of conditional confidentiality aids the building of trust within the therapeutic relationship, while protecting the young person and possibly, others.

**Legal mandates for sharing information**

In some circumstances, information must be shared even if consent is not provided. In such situations, it is usually prudent to tell the individual that certain information is to be shared with a third party.

Circumstances in which a client's confidential information can or must be shared with others include:

- Where a competent client consents to the sharing of his or her confidential information.
- Where an incompetent client’s legal guardian consents to the sharing of that client’s confidential information.
- Where a valid subpoena or summons is served on a health worker compelling him or her to disclose clinical or other information to a court by, or on, a specified date. Failure to comply with a valid subpoena or summons may constitute contempt of court, which can lead to a fine or a prison sentence.
- Where there is a statutory (legislative) reporting obligation, for example, mandatory reporting of notifiable diseases to the Department of Health under the Health Act 1911 (WA) and the mandatory reporting of child sexual abuse under the Children and Community Services Act 2004 (WA).
- Where a statutory provision permits the disclosure of confidential information. For example, section 129(1)(a) of the Children and Community Services Act 2004 (WA) which permits the reporting of child welfare concerns to the Department for Child Protection and Family Support.
- Where there is an overriding public interest justifying disclosure to a proper authority. Such disclosure will only be justified in exceptional circumstances where there is a serious, imminent and identifiable risk of harm or danger to the health or life of any person (including the client) requiring immediate action.

Note: Particulars of public interest and disclosure have been defined for school health services in the Memorandum of Understanding with Department of Education for the provision of school health services.

**Disclosing confidential information**

When disclosing confidential information in any of the circumstances listed above, care should be taken to ensure that only ‘authorised’ and necessary information is
shared, including for statutory provisions. Sharing of information must be limited to information that falls within the scope of the consent given or the statutory provision applicable. This includes the person or organisation by and to which the information can be released.

Similarly, in the case of a public interest disclosure, only confidential information that is necessary to enable the immediate danger to be averted can justifiably be disclosed. Such information can only be disclosed to an organisation or person who is in a position to take the necessary action. Depending on the circumstances, this may include the WA Police, the Department for Child Protection and Family Support, parent or guardian, or a school principal.

Confidentiality in the school setting

In a school setting, there may be times when it is in the young person’s best interests to share information with certain others in the school community, who are in a position to provide support and care for an individual. The balance between the duty of care and duty of confidentiality can be challenging in some cases involving school students. The Memorandum of Understanding with Department of Education outlines the management of sensitive and confidential information for school health service staff.

Promoting the best interests of a child (minor under the age of 18 years) is central to the work of community health and school staff. All staff owe a duty of care to the children and adolescents with whom they work.

It is acknowledged that each organisation must adhere to its own rules and procedures for sharing information and reporting issues of concern, however in school settings there are some circumstances when collaboration may be crucial to safeguard the welfare and safety of individuals.

When community health staff consider a child or adolescent to be at significant risk, limited specific information may be shared with the school Principal (or delegate) to ensure the child’s safety and welfare. Such circumstances include situations when an individual is experiencing one or more of the following:

- Suicide ideation
- Self harm
- Bullying
- Child abuse

It is preferable that consent to share information is provided by the young person (if competent) or their parent/guardian. In circumstances where consent is not forthcoming from the competent minor or the parent, or obtaining parental consent is not appropriate, the health professional may seek the advice of a line manager, or rely upon their professional judgement in deciding whether to share the information with the school Principal.

Information that is shared should be specific and limited to that required, to protect the safety and welfare of the individual. The Principal and the health professional will need to determine on a case by case basis, if and how, information should be shared with the parent (guardian) and/or other school staff members who are in positions to safeguard the safety and welfare of the individual. At the time of disclosing the information to the Principal, if the health professional believes that the
Principal should not share the information with parents, then the health professional should advise the Principal indicating why the information should not be shared.

If there is doubt about when and what information should be shared, School Health Service staff should consult with a line manager.

**Key points for community health nurses working in schools**

- Sensitive communication and gaining the trust of young people is all important. Young people want to be treated respectfully and may need support to feel comfortable in talking about personal information.

- When working with adolescents, community health nurses in schools must explain the limitations of total confidentiality and offer conditional confidentiality at the start of a consultation, or as soon as appropriate.

- Community health nurses are advised to display written advice about conditional confidentiality in a prominent place in the health centre/office. (See Appendix B for a poster template).

- The ability of community health nurses to set the scene and ask the right questions is pivotal in addressing the health needs of adolescents. Refer to the HEADSS assessment policy guideline.

- Community health nurses working with adolescents should seek professional development to learn about adolescent development, common health issues and effective communication techniques.

- Community health nurses should encourage and support adolescents to inform their parents or guardian about significant health issues. The support provided should reflect the maturity of the individual, significance of the issue, and the particular circumstances of each case. If in doubt, nurses should consult a line manager about what information should be shared with a parent or guardian, and how the communication should occur.

- When talking to a school student, nurses are to consider others in the school community who could assist in the care and support of the young person. Talk to the young person about the benefits of sharing information to certain others, and gain consent to do so if possible and appropriate.

- Community health nurses working in schools have the same legal obligations as other health professionals working in hospitals or clinics. However, when a student is considered to be at significant risk, limited specific information may be shared with the school Principal (or delegate) to ensure the individuals safety and welfare. Such circumstances include situations when an individual is experiencing one or more of: suicide ideation, self harm, bullying, child abuse.

**Documentation**

- Decisions and actions relating to sharing information should be well documented on the client record.
## References


Memorandum of Understanding between the Department of Education and the Department of Health for the provision of School Health Services for students attending public schools. 2013-16.

## Related internal policies, procedures and guidelines

The following policy documents can be accessed in the Community Health Manual via the [HealthPoint link](#) and [Internet link](#)

- Lesbian, gay, bisexual, transgender and intersex young people
- Contraception issues
- Sexually transmitted infections
- Pregnancy (suspected or confirmed) management
- Sexual assault
- Sexual health issues – how to ask the right questions
- HEADSS Assessment

## Related internal resources and forms

The following resources and forms can be accessed from the [HealthPoint CACH Intranet link](#)

- HEADSS Adolescent Psychosocial Assessment form – Initial Assessment
- HEADSS Adolescent Psychosocial Assessment form – Plan and Follow up

Memorandum of Understanding between the Department of Education and the Department of Health for the provision of School Health Services for students attending public schools. 2013-16

## External resources

- [Guidelines for Protecting Children 2015](#)
- [Working with Youth – A legal resource for community based health workers: comprehensive legal information for community health staff, including case studies.](#)
Appendix A: Judging the maturity or competence of a minor

The assessment of a child as a ‘mature minor’ is not made on the basis of the child’s chronological age alone and does not need to involve an accompanying parent or guardian. It is based on the child’s experience, emotional maturity and intellectual capacity. The development of these attributes is a continuum and varies from one child to another. There is no cut-off point, other than the time when an individual reaches the age of 18-years and is recognised by law, as an adult. Consequently, health workers must assess each child’s competence on a case-by-case basis.

In assessing the competence and maturity of a child, the following factors may (depending on the individual circumstances) be important:

- Age of the child.
- Nature of the clinical or other problem.
- Ability of the child to explain the clinical or other problem by providing an appropriate history.
- Nature and purpose of the proposed health care or other action.
- Ability of the child to understand the gravity and complexity of the proposed health care or other action.
- Ability of the child to understand and rationalise health care or other relevant options.
- Consequences of the proposed health care (including side-effects of proposed treatment) or other action.
- Ability of the child to understand fully the nature, consequences, risks and implications of the proposed health care or other action and of non-action.
- Emotional impact on the child of either accepting or rejecting the proposed health care or other action.
- Child’s general maturity of expression.
- Child’s level of functioning in other aspects of his or her life.
- Child’s level of schooling.
- Child’s level of independence from parental care.
- Any moral and family issues involved.
- Health worker’s prior knowledge of the child.
- Reason the child came to see the health worker about the clinical or other problem without parental involvement.
- Whether the child is acting freely in attending the health worker and making his or her decision.

The above list is provided for general guidance only. The items specified will not apply to every circumstance. Nor is the list exhaustive. Other issues may need to be taken into account in the individual circumstances. As such, health professionals must assess each client’s circumstance on a case-by-case basis.

Where a health professional is unsure about the maturity or competence of a child, he or she should confer with a line manager to support decision-making.

Health professionals should ensure that the process, and factors relied upon in assessing a child’s competence, are carefully documented in the individual’s health record.
Appendix B: Limits of Confidentiality poster

It is suggested that this notice be placed in visible position in the community health nurse’s office (coffee table or near chairs where consultations take place).

Limits of Confidentiality

If you’re thinking about hurting or killing yourself….

If someone’s hurting you…

Or you’re thinking about hurting someone else…

Then I can’t keep that a secret.