

2 Ethical and Legal Foundations of Group Work

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Preview

This chapter highlights essential ethical and legal issues in group work, including confidentiality, informed consent, relationships among group members, termination issues, group participation, diversity issues, the Health Information Portability and Accountability Act (HIPAA), and the Family Educational Rights and Privacy Act (FERPA).

Ethical Issues in Group Work

One of the attributes of sound group work practice is the continuous assessment and reflection of the way in which a leader interacts with members. This reflective process is necessary to ensure that a leader provides the most appropriate ethical and legal group work services to members and particularly important given the myriad issues that group leaders face every day. Some issues are clearly governed by either legal or ethical mandates; other issues are not as clear and challenge leaders to determine the appropriate course of action. When challenges arise, it is wise to begin with an examination of the ethical standards and legal issues as the basis for reflection. This process is particularly important when conducting groups because the issues are often more complex than dealing with one client at a time.

Both laws and ethical standards are based on generally accepted societal norms, beliefs, customs, and values. However, laws are more prescriptive than ethical standards, have been codified, and carry penalties for failure to comply. Another difference is that laws “dictate the *minimum* standards of behavior that society will tolerate, whereas ethics represent the *ideal* standards expected by the profession” (Remley & Herlihy, 2014, p. 3). Ethical standards are generally developed by professional associations to guide the practice of members of their profession.

Ethical standards can be further delineated into two categories: mandatory ethics and aspirational ethics. Mandatory ethics describe minimal adherence to the standards. For example, group leaders must act in compliance with the ethical standards of their profession, that is, the imperatives of counseling practice. Aspirational ethics are the ought-to-dos of counseling, wherein group leaders try to aspire to the highest standards and think about the impact of their behavior. So counselors must obey the law, must practice mandatory ethics, and should strive for aspirational ethical behavior. According to Herlihy and Corey (2014), to practice aspirational ethics, leaders must go beyond compliance with ethical standards and understand the underlying principles or intent. These principles or intents that underlie all codes of ethics are referred to as meta-ethical principles.

Meta-Ethical Principles

Forester-Miller and Davis (2017) delineated five moral principles that undergird counseling ethical standards and that are important to understand in order to move toward aspirational ethics. These five moral principles are autonomy, beneficence, nonmaleficence, fidelity, and justice. The 2014 ACA *Code of Ethics* added a sixth principle—veracity. Ethical dilemmas occur when meta-ethical principles conflict with one another. While these principles almost always overlap and are congruent within group work, group leaders may sometimes be unsure which principle is most beneficial to promote. Dilemmas may also ensue when ethical principles applied to both individual group members and the group as a whole conflict. Let's briefly explore each of these six meta-ethical principles as each applies to group work.

Autonomy refers to independence and the right of the member to make one's own decisions. Counselors are careful not to impose counselor values on the client. Leaders need to respect the right of members to make sound and rational decisions based on the members' values and beliefs rather than on what the counselor may view as best for members. Leaders do this by addressing and supporting individual group member goals. Goal setting, a task of early group stages, is conducted both by individuals and the group as a whole and is related to autonomy. For example, individual and group goals may not be congruent, at times even appearing to be at cross-purposes. It is imperative that group leaders select members who will not impede, or whose well-being will not be harmed by, the group process. Members should be encouraged to set goals that can be addressed in the time allotted for the group.

Beneficence refers to doing what is in the best interests of members and promoting well-being, growth, and an optimal group experience. For example, group leaders promote the greater good for members by providing adequate time for processing group dynamics and content and evaluating the group experience. An optimal group experience for members may begin with informed consent in the planning phase of the group. Leaders may prepare members from the onset of the group for how and when termination will take place, alternatives to the group experience, follow-up procedures, and potential

referrals for continued group work. In addition, group leaders create an optimal group experience by adapting the group content and process as needed and respecting diverse perspectives and cultural identities present within the group.

Nonmaleficence is often referred to as “doing no harm”; that is, leaders avoid doing anything that may harm members. This includes preventing psychological or emotional harm potentially resulting from group member and leader interactions, group leader incompetence, inadequate treatment procedures, member abandonment, or premature termination.

Fidelity refers to honoring commitments and establishing a relationship based on trust. Group leaders promote open communication with members while fostering group relationships. Communication in the form of honest expression of emotions by both group leaders and members can create ethical dilemmas. Along with the challenges of the group process itself, members may experience additional stress if they may feel pressured to conform to member functions (e.g., providing feedback to others, evaluating the group experience).

Justice involves the fair treatment and consideration of each member, doing what is best for each member according to the needs of each member by facilitating equitable and culturally relevant treatment. Equitable treatment may refer to equal access to group resources (e.g., individual time, content relevant to members’ needs). Members may feel that their access is compromised by other group members, as in the case of members who monopolize group time, interrupt others, give inappropriate advice, or ask too many questions during group. Unequal access to group resources may cause some members to feel slighted and lead to premature termination.

Veracity requires that counselors be honest with those with whom they come into professional contact. This is particularly important in groups, where the counselor must be clear about the expectations for members, the process for the group, potential harm or problems that may arise, and potential outcomes.

Group leaders have a fiduciary responsibility to members. This responsibility extends from the time of screening members during the group planning phase to follow-up sessions after termination. It is guided by ethical behavior and consideration of the cultural diversity of all members. Thus, group leaders are entrusted to foster and respect individual development within the context of group learning, facilitate a group in a manner that promotes the group’s purpose, avoid and minimize potentially harmful content and process, and be truthful and just with members.

Grounding Oneself in the Ethics of Group Work

Group leaders are governed by the ethical codes of their professional organizations and certifying bodies. Members of the American Counseling Association (ACA) are bound by the *ACA Code of Ethics* (American Counseling Association, 2014) and are encouraged to adhere to the *ACA Multicultural and Social Justice Competences* (Ratts, Singh, Nassar-McMillan, Butler, & McCullough, 2015). Likewise, members of the American School Counselor Association (ASCA) are bound by the *Ethical Standards for School Counselors* (American

School Counselor Association, 2016). Counselors certified by the National Board for Certified Counselors (NBCC) are expected to adhere to the NBCC *Code of Ethics* (National Board for Certified Counselors, 2012). Members of the Association for Specialists in Group Work (ASGW) are expected to follow the ASGW *Best Practice Guidelines* (American Specialists in Group Work [ASGW], 2007) and demonstrate mastery of the ASGW multicultural and social justice competencies for group workers (American Specialists in Group Work [ASGW], 2012). Graduate counselor training programs are encouraged to design their group work training programs to be consistent with the ASGW training standards (American Specialists in Group Work [ASGW], 2000) and national accreditation standards (Council for Accreditation of Counseling and Related Educational Programs [CACREP], 2016).

The American Counseling Association is the professional association for all counselors. One of the functions of professional associations is to promulgate ethical standards and thereby provide direction and information to counselors and their clients about appropriate and ethical behavior. The ACA (2014) *Code of Ethics* addresses the responsibilities of leaders toward their clients, colleagues, workplace, and themselves by delineating the ideal standards for conducting one's behavior. All ACA members are required to abide by the *Code of Ethics*, and action will be taken against any member who fails to do so. Because these are the standards of the profession, all group leaders, including those counselors who lead groups in schools, are held to the ACA *Code of Ethics* by the mental health community, regardless of whether they are members of the ACA (Linde, 2019).

The ACA (2014) *Code of Ethics* is applicable to counseling in all settings and with all populations. More to the purpose of this book, however, are two sections of the code that address issues specific to groups and especially the use of group work in schools. Section A.9 states:

A.9.a. Screening

Counselors screen prospective group counseling/therapy participants. To the extent possible, counselors select members whose needs and goals are compatible with the goals of the group, who will not impede group process, and whose well-being will not be jeopardized by the group experience.

A.9.b. Protecting Clients

In a group setting, counselors take reasonable precautions to protect clients from physical, emotional, or psychological trauma. (p. 6)

Thus, Section A.9 outlines, in broad terms, the responsibilities of the group leader when creating a group to screen potential members, ensure the appropriateness of members chosen, and to do what is in the best interest of the other members in the group.

Several divisions of the ACA and other counseling organizations have created their own codes of ethics or guidelines for ethical behavior that pertain more specifically to their work setting or specialty area. For professional school counselors, whether or not you are a member of ASCA, the ASCA *Ethical Standards for School Counselors* (2016) are the most relevant guidelines because they provide direction for group counseling in schools. Section A.7, Group Work, states:

School counselors

- a. Facilitate short-term groups to address students' academic, career, and/or social/emotional issues.
- b. Inform parent/guardian(s) of student participation in a small group.
- c. Screen students for group membership.
- d. Use data to measure member needs to establish well-defined expectations of group members.
- e. Communicate the aspiration of confidentiality as a group norm, while recognizing and working from the protective posture that confidentiality for minors in schools cannot be guaranteed.
- f. Select topics for groups with the clear understanding that some topics are not suitable for groups in school and accordingly take precautions to protect group members from harm as a result of interactions within the group.
- g. Facilitate groups from the framework of evidence-based or research-based practices.
- h. Practice within their competence level and develop professional competence through training and supervision.
- i. Measure the outcomes of group participation (process, perception, and outcome data).
- j. Provide necessary follow-up with group members (p. 4).

In summary, the ASCA *Ethical Standards* describe the safeguards that a professional school counselor must address in the development and implementation of a school counseling group. The application of these issues will be addressed in more depth later in this chapter.

The Association for Specialists in Group Work, a division of the ACA, developed the *ASGW Best Practice Guidelines* (Association for Specialists in Group Work, 2007) and *ASGW Professional Standards for the Training of Group Workers* (Association for Specialists in Group Work [ASGW], 2000). The *ASGW Best Practice Guidelines* identify sound practices when planning a group, selecting members for that group, conducting group sessions, and group processing. These guidelines are consistent with the ACA (American Counseling Association, 2014) *Code of Ethics*, but they contain more detail that is useful when conducting groups.

In 2000, ASGW revised the *Professional Standards for the Training of Group Workers* to use the more inclusive term *group work* to describe what

leaders do and to delineate levels of training: core training and four specializations. The standards continue to provide guidance to counselor education programs regarding curriculum and to delineate the coursework and experiential requirements, knowledge and skill objectives, and assessment and planning skills for the core training and each of the specialty areas. At this time, readers are strongly encouraged to review the *ASGW Best Practice Guidelines* and *ASGW Professional Standards for the Training of Group Workers* to become thoroughly familiar with these critical group work documents.

Finally, group work takes place within a community and is subject to that community's culture, norms, and standards of conduct. Whether one is participating in a school, business, or industry task group; providing classroom guidance experiences in a school; conducting a group counseling experience for adolescents with perfectionistic tendencies and concomitant anxiety; or providing group psychotherapy for adults who have been sexually traumatized, the leader and members are influenced by the cultural matrix in which they are embedded. The group work truism, "All group work is multicultural," provides a helpful reminder. To practice successfully in the multicultural context of group work, leaders must be aware of different worldviews and the effect of these worldviews on group work interventions; be aware of personal beliefs and attitudes related to relationships, healing, and health; and learn and provide culturally relevant group work interventions (DeLucia-Waack & Donigian, 2003).

Major Ethical Issues in Group Work

Leaders conducting group work will be faced with myriad challenges. Group leaders recognize that conducting groups in any setting is challenging due to the varied and nuanced cultures of different work settings, the age of group members, and policies and procedures that may influence the way in which groups are conducted. This is not to say that planning for and running groups is difficult; ordinarily it is not. But challenges do exist. For example, the nuances of school culture, the demands for increased achievement, and the fact that the vast majority of students are minors and may not hold their own privilege and confidence all make for special challenges to group work in schools that leaders must address. This section provides brief analysis and instructions for dealing with confidentiality, informed consent, relationships among group members, participation and termination issues, counselor competence, and diversity issues.

Confidentiality

Confidentiality is the cornerstone of counseling and helps create the atmosphere in which the member feels able to trust and share with the leader and other group members. Members must feel that whatever they tell the group members will not be shared outside the group, except in instances in which

the leader recognizes a duty to warn, or with member consent. Group work presents special challenges for confidentiality because the session is not like individual counseling with just one client and one counselor. If a group is to be productive, members must trust each other. In groups, there is no guaranteed confidentiality among members because there are multiple members in the session. Members can agree to hold information about other members confidential, but there is no law or professional ethic requiring them to do so. However, there is an ethical obligation for confidentiality that leaders must uphold. The *ASGW Best Practice Guidelines* Section A.7.d (Association for Specialists for Group Work [ASGW], 2007) states:

Group Workers define confidentiality and its limits (for example, legal and ethical exceptions and expectations; waivers implicit with treatment plans, documentation and insurance usage). Group Workers have the responsibility to inform all group participants of the need for confidentiality, potential consequences of breaching confidentiality and that legal privilege does not apply to group discussions (unless provided by the state statute).

(p. 5)

The ASCA (American School Counselor Association, 2016) *Ethical Standards for School Counselors* (A.7.e) indicates that school counselors:

Communicate the aspiration of confidentiality as a group norm, while recognizing and working from the protective posture that confidentiality for minors in schools cannot be guaranteed.

(p. 4)

Therefore, conducting groups with minor children, whether in schools or not, places an extra responsibility on leaders to collaborate with parents and guardians, and to provide them with accurate and comprehensive information, while still maintaining ethical responsibilities to the young members.

It is the responsibility of the group leader to emphasize the importance of confidentiality and to establish this as the norm (Cottone & Tarvydas, 2016). A discussion of confidentiality should be part of the group screening interview before the group is established and part of the first group session, and it should be repeated throughout the group experience as appropriate. However, the group leader must also be honest that confidentiality cannot be guaranteed. If confidentiality is broken during the group experience, the group leader must address the issue with the members and reinforce the norm of confidentiality.

There are additional issues involved when counseling minors. Legally, confidentiality rights of minor children belong to the parent or guardian, but the ethical rights belong to the child. Balancing the rights of the parents and guardians against the needs of the child is a continuous process and involves many factors (Linde, 2019). Leaders must try to maintain confidentiality within the group, but they must disclose to parents and guardians when necessary. Leaders should help parents and guardians understand the importance

that confidentiality plays in group work and engage their trust as well as the trust of group members. Should a parent or guardian desire to know what is going on in the group, the leader may divulge information only about that parent's or guardian's child as appropriate, and may not share information about other members in the group. Leaders should be aware of state statutes or other institutional policies affecting counseling minor children. Professional school counselors may want to obtain passive consent (commonly called assent), if not informed consent, from parents and guardians to ensure their support of their child's participation in the group and their willingness to respect the confidential nature of counseling. (See the next section on informed consent.)

The ACA (2014) discussed the limitations of confidentiality. The major exception to confidentiality is the duty to warn. Should it become apparent that a group member is being harmed, such as by abuse; harming or threatening someone else; or threatening to harm himself or herself, the leader has a duty to warn the appropriate entity. The duty to warn is not applicable in all states; for example, Texas does not recognize this counselor duty.

Finally, group leaders should encourage members to honor other group members' right to privacy even after termination of the group experience. Group leaders should disseminate information about group members to clinicians to whom the leader refers a group member only with member consent (or the consent of the parent or guardian in the case of a minor child), when it is beneficial to the counseling process, when there is an imminent risk of harm to the group member or others, or there is a court-ordered requirement to disclose information about a group member. In short, confidentiality is for all time, unless legal or ethical circumstances require leaders to divulge confidential information.

Working with mandated clients may create issues regarding confidentiality, depending on the circumstances. In schools, counselors are frequently asked to work with specific students who are given little choice about seeing the counselor or being in a group. In such cases, it is important for counselors to help students understand the benefits of being in the group and how the group may actually help them. Students' confidentiality rights remain the same as with other types of groups, although counselors should expect that an administrator will follow up and want information about student participation and should check with students to determine what they are willing to share.

Clients may be ordered by the courts to undergo counseling for a variety of reasons, including drunk driving, substance abuse, intimate partner violence, and aggressive behaviors. Some correctional programs incorporate mandatory counseling during incarceration. In these cases the counselors may be required to provide periodic updates on clients' progress to the courts, case workers, and/or other authorities. Counselors need to be aware of their legal requirements to disclose client information, and should take extra care with their documentation and record keeping. However, they are still bound by their ethical duty to maintain confidentiality (Wheeler & Bertram, 2015). The tension between working with offenders and confidentiality poses challenges for

counselors, who should consult when they are uncertain about their ethical and/or legal responsibilities in such situations.

Informed Consent and Disclosure Statements

As part of the screening interview process, leaders should obtain informed consent from potential group members or, in the case of minor children, they may want or be required to obtain informed consent from the parents or guardians.

Informed Consent in Clinical Practice

In clinical practice, it is essential that group members understand their rights as group members; understand the purpose of the group and generally what to expect from the group, including possible outcomes; and that participation is voluntary (or mandatory, if that is the case). Cottone and Tarvydas (2016) emphasized that informed consent also addresses the issue of the match between the member and the group. The screening must be sufficient to ensure that the client is being placed in a group that is consistent with the client's goals and that is compatible with the client.

Professional ethics and licensing statutes often require leaders to create and display a disclosure statement. ASGW standards require that group workers prepare a professional disclosure statement specifically for their group work activities (Best Practice Standard A.7.b, ASGW, 2007). This disclosure statement should include the following:

- The professional preparation of the group worker (e.g., education; training; licenses held, with the address of the licensing boards; certifications held, with the addresses of the certifying bodies; theoretical orientation).
- The nature of the group services provided (e.g., the nature, purpose[s], and goals of the group).
- The role and responsibility of group leaders and group members, including expectations for member behavior in the group.
- The limits and exceptions to confidentiality with regard to group member health information and disclosures made during the group, especially with regard to individuals coerced into group attendance by third parties.
- Policies regarding psychoactive substance use.
- Policies regarding contact or personal involvement among group members outside the group.
- Policies regarding attendance at group meetings and procedures to be followed in the event of absences.
- Documentation requirements and required disclosure of information to others.
- Procedures for consultation between (among) group leader(s) and group member(s).
- Fees and billing procedures.

- Time parameters of the group.
- Potential effects of group participation.

A fully developed disclosure statement that covers these points can help to ensure that when the prospective group member consents to group participation, it is on the basis of being truly informed (Remley & Herlihy, 2014). A sample disclosure statement is presented in Table 2.1.

Table 2.1 Sample Disclosure Statement

PROFESSIONAL DISCLOSURE STATEMENT

Samuel Smith, M.A., LPCC

CONTACT INFORMATION

City Health Care Center, 123 Anystreet, Anytown, Mystate 43210

Phone: 901.234.5678; **Fax:** 901.234.8765

PROFESSIONAL EDUCATION

Midwestern University, M.A. in Mental Health Counseling (1964–1967)

National Association of Cognitive-Behavioral Therapists, Cognitive-Behavioral Training Institute (1992–1994)

LICENSURE AND CERTIFICATION

Licensed Professional Clinical Counselor and Supervisor (License: 4321S)

Certified Cognitive-Behavioral Therapist (National Association of Cognitive-Behavioral Therapists)

AREAS OF COMPETENCE

Assessment and diagnosis of adult mental and emotional disorders including chemical addiction.

Individual and group psychoeducation, counseling, and psychotherapy.

Individual and group training supervision for individuals seeking professional counselor licensure.

GROUP TREATMENT: A TUNE-UP COURSE FOR MARRIAGES

Nature, Purpose, Goals of Group

Type of group: A psychoeducational group for couples with intact, durable marriages.

Purpose and goals for the group: The purpose of the group is marital enrichment.

Its goals include: to help married couples assess the quality of their marital life, set goals for marital enrichment, improve communication skills, increase clarity of personal boundaries, increase ability of couples to negotiate for relationship change, and increase the couple's sense of joy in their marriage.

Structure of the group: This group will be limited to six couples who have been married for at least five years. The group will consist of an orientation meeting to take place before the group starts, ten marital enrichment meetings, and a follow-up meeting one month after the last marital enrichment meeting. Meetings will consist of group warm-up activities, self-assessment activities, didactic inputs, discussion, and small-group skill practice activities. Homework assignments will supplement within-group learning.

Leadership of the Group

Leaders: During this group, I will have the assistance of a co-leader, Ms. Janet Jones, M.A., LISW, with whom I have co-facilitated over 30 marital enrichment groups of various kinds.

Responsibility of the Leaders: The leaders will be responsible for providing meeting space and for conducting the group meetings. The leaders will provide information about marital enhancement skills, attitudes, and values and will lead skill practice sessions to enhance skill development. The leaders will also provide a study guide

for recommended reading materials and will assign homework to facilitate transfer of within-group skill acquisition to real-world situations. Members may contact me or my co-leader between sessions to discuss problems that may have arisen regarding their membership in the group (e.g., attendance, fee payment, third-party reimbursement) or, on an emergency basis, to discuss matters related to their marriages; however, neither I nor my co-leader will accept a group member for individual or marital therapy during the course of the group.

Membership of the Group

Responsibility of the Members: The members will be responsible for coming to each group session on time, for participating in discussions and skill practice activities, and for completing homework assignments.

- Members join the group as a couple. Couples must attend meetings as couples. If one member cannot attend, the other must also absent himself or herself from the meeting. Couples must attend 80% of the group meetings to maintain membership.
- Members who are taking prescribed psychoactive substances may, of course, continue to take their medication per physician's orders; however, members are expected to come to group sober—not under the influence of a psychoactive substance.
- Members are expected to refrain from discussing their group membership experiences with any group members (other than their spouse) during the course of the group except during group meeting times.

Limits of Confidentiality

- Although it is useful to the development of trust among group members if members promise to maintain confidentiality regarding anything said or done by any member during group meetings, the promise is not enforceable by law in this state. Further, both my co-leader and I are mandated reporters whenever clients threaten suicide or homicide, or are behaving in neglectful or harmful ways toward children, invalids, or the elderly.
- If you wish to use a third-party payer to reimburse you for the cost of this marital enrichment group, you will be requested to sign a release of information so that I may supply your third-party payer with information requested to support your claim for reimbursement.

Fees and Billing Procedures

- The cost of a ten-session **Tune-up Course for Marriages** is \$350 per couple; however, adjustments in the fee will be made according to City Health Care Center's standard fee-adjustment schedule. There is no charge for attending the orientation meeting or for attending the one-month follow-up meeting.

Potential Impacts of Group Participation

- Marital enhancement groups such as the one I and my co-leader are offering have been shown through research evidence to be helpful to marital couples; however, no guarantees can be made that this particular group will be helpful for any particular couple. In fact, as has also been shown by research, some couples who enter marital enhancement groups find that they have irreconcilable differences that have culminated in the couple seeking divorce. We encourage all couples applying to this program to discuss any concerns they have about joining a group such as our **Tune-up Course for Marriages** at the intake interview.

THIS INFORMATION IS REQUIRED BY THE MYSTATE COUNSELOR LICENSURE BOARD, WHICH REGULATES ALL LICENSED COUNSELORS

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Informed Consent in Schools

The ASCA ethical standards (American School Counselor Association, 2016, A.7.b) states that school counselors “inform parent/guardian(s) of student participation in a small group” (p. 4). In school settings, professional school counselors must follow the policies and procedures established by the system regarding parental and guardian consent for participation in a group. If the school system requires parental or guardian consent, it must be obtained prior to beginning the group. If the system either does not require consent or has no policies regarding consent, the professional school counselor must weigh the merits of the situation. While a professional school counselor may have the legal right to conduct groups without parental or guardian consent, in some systems it may be unwise politically to do so. Having a parent or guardian make a complaint to building administrators or school system officials is rarely a pleasant experience, even if the professional school counselor is in the right. In such cases, the professional school counselor may wish to use either passive consent (assent), which ordinarily involves a written notification, or informally touch base (ordinarily a verbal communication) with the parents and/or guardians to let them know that the child is going to be included in a group.

Regardless of the consent requirement, it is essential that students understand their rights as group members (American School Counselor Association, 2016); the purpose of the group; generally what to expect from the group, including the possible outcomes; limits of confidentiality; and whether participation is voluntary. Cottone and Tarvydas (2016) emphasized that informed consent also addresses the issue of the match between the member and the group. The screening must be sufficient to ensure that the student is being placed in a group that is consistent with the student’s goals and that is compatible with the student. Group members must also understand (a) ground rules, the role of the group leader, and expectations for group members; (b) limits and exceptions to confidentiality; (c) logistics of the group, such as the length and number of sessions, expectations for attendance, and follow-up to the group; and (d) potential impact of group participation.

If the professional school counselor sends a consent form home with the student, it should contain sufficient information for the parent and/or guardian to make a determination regarding participation. The form should include information about the topic and/or goal of the group, the number and length of sessions and when sessions will be held, the name and position of the person(s) conducting the group, the expected outcomes, and contact information for the group leader. If informed consent is required, the form should also include a line for the parent’s or guardian’s signature and date. Passive consent (assent) would not require that the parent or guardian return a signed form to the school. See Table 2.2 for a sample informed consent letter.

Table 2.2 A Sample Informed Consent Letter to Parents and Guardians

School Letterhead
School Counseling Department
Date

Dear Parent/Guardian:

One of the services our school counseling program provides is to work with students in small groups on a variety of topics throughout the school year. Participation in these groups is voluntary. Group sessions are usually scheduled once a week for eight weeks during the school day. The groups are scheduled to minimize the amount of time that students miss from their classes, and students are expected to make up any work they may miss. Confidentiality of what students share will be respected, but it cannot be guaranteed.

Your child, _____, has been invited to participate in a group on _____. The group should begin _____ and should end _____. The purpose of the group is _____, and it is expected that participation in the group will lead to _____. Please sign the form at the bottom of this letter and return it to me by (date) _____ to allow your child to participate.

Please feel free to contact me if you have any questions. I can be reached by telephone at _____ or by email at _____.

Sincerely,
Professional School Counselor

Group Counseling Consent Form

I give permission for my child, _____, to participate in group counseling with the school counselor. I understand this group will focus on _____.

Parent/Guardian Signature _____ Date _____

Relationships Among Group Members

The issue of personal relationships among group members sometimes is an ethically gray area. In private practice or mental health center groups, it is unlikely that group members will see each other outside the group, although these chance meetings depend on the size of the community, of course. In school settings, students often may interact outside the group. It is very common in schools for students to know each other and perhaps even be in the same class or extracurricular activity. Sometimes leaders plan a group on a specific topic, such as loss and grief or changing families, and must decide whether to include siblings and/or relatives in the same group. Which is ethically more appropriate: to provide the service for all members needing the help and to deal with any relationship issues that arise, or to deny group membership to some members because they have a relative in the group? Leaders sometimes are faced with this and other dilemmas. As long as care is taken to minimize problems and maximize participation, either course of action may be ethically appropriate. In such cases it is always a good idea to consult with another counselor and to document the rationale for one's decision.

When Should a Group Terminate?

The ACA *Code of Ethics* (2014) states that group leaders should terminate groups when services are no longer needed, when clients are unlikely to benefit from further services, or when continuing the services may actually harm the client. Services may be considered ineffective when group content and process is not appropriate for members or if leaders lack competence regarding group leadership or content. In addition, group leaders should be cognizant that not all members will be ready to end the group at the same time, creating a dilemma between individual group member and group development. Members develop differently throughout the group as they set goals, overcome resistance, develop and apply new skills, and say goodbye to each other. A number of ethical issues specifically related to a member's readiness for termination can present leaders with ethical dilemmas. Group leaders help members meet individual goals (e.g., applied learning, minimizing unfinished business), but in reality, how responsible are group leaders for ensuring applied learning? How much unfinished business is allowed at the end of a group experience to still have successful termination? What professional and ethical obligation do group leaders have to follow up with members after termination? These are all questions group leaders face, and the answers vary according to the group.

In school settings, classroom guidance and counseling groups are generally planned for a finite number of sessions and terminate at the designated date. School counselors must be sensitive to the progress made by individual students during the sessions and provide appropriate follow-up and, if appropriate, referrals for those students in need of continuing assistance.

Group Participation

Group leaders should encourage silent members to participate, acknowledge nonverbal communication, and discourage members from monopolizing the time or content of the group session. Because a key assumption in group work involves verbal expression for group member growth, group leaders should also respect individual differences related to communication patterns. For instance, some members may value nonverbal communication, view group leaders as expert, and thus be less inclined to challenge others. It is good practice to get all members active in the group process early in group sessions to facilitate participation, trust, and cohesion.

The Right to Terminate Prematurely

Premature termination may be beneficial to individual group members, particularly if members perceive that the group is not meeting their needs in some way. In addition, members may choose to terminate prematurely as a result of an improper placement in a group. For closed groups (i.e., groups that will not accept new members once the group sessions have begun), group leaders

should encourage members who wish to leave the group early to discuss why they want to leave the group with other group members within a session. Such actions help bring some degree of closure for the members who want to leave and those members who will remain. The discussion also frequently creates interesting content and process related to individual and group goals.

Ethical standards and best practice guidelines (American Counseling Association, 2014; Association for Specialists in Group Work, 2007) require that leaders not abandon or neglect members. Leaders must monitor their services to ensure that members who are not benefiting from a particular group experience are referred for a more appropriate form of therapy or different type of group.

In the case of mandated clients who involuntarily enter a group, the right to terminate prematurely ordinarily is not an option. However, group leaders still have an ethical and professional responsibility to provide appropriate services to group members while respecting varying levels of group member investment in the group experience. Thus, group leaders should respect the degree that the mandated group member participates in the group. Group leaders should encourage a mandated group member's participation. While attendance may be mandated, individual participation should remain voluntary to avoid harm to the group member.

Counselor Competence

The ACA (2014) *Code of Ethics* cautions professional counselors to practice only within the scope of their education, training, and experience. The ASGW (2007) *Best Practice Guidelines*, Section A, discusses the issues involved in counselor competence when conducting groups, and states that group workers are aware of their strengths and weaknesses when leading groups, practice in those areas for which they meet the training criteria, and assess their knowledge and skill in the type of group they lead. Developing competence in the core areas delineated by the ASGW training standards is the foundation for conducting groups. It is essential that leaders continuously monitor their own competence, because different groups and clients require different skills (Remley & Herlihy, 2014).

Leaders must also be aware of how their personality and character influence the way in which the group functions and ultimately affects the success of the group. Group workers must go through the self-reflective process to examine their positions on issues. This is particularly important because value-laden issues often arise in counseling sessions. The group leader's values and beliefs will come out during the group. Gladding (2016) believed that group leaders who try to hide or are unaware of their values may actually do more harm than good and encouraged leaders to model openness by displaying a willingness to explore and accept diverse viewpoints, values, and beliefs. That said, it is an ethical imperative that the leader not try to impose values upon the group members.

Competence in group work involves group leaders employing interventions that are congruent with group purpose and that are culturally relevant. Group leaders should continually monitor their effectiveness by formal and informal methods to avoid group member harm. In addition, group leaders should seek continuing education in group leadership, including culturally sensitive and culturally relevant group practice (American Counseling Association, 2014; Association for Specialists in Group Work, 2007).

While it is typically viewed as unethical when a group leader prematurely terminates a group, it may be ethically imperative to do so if a group leader does not possess group leadership skills or the specialized knowledge needed to facilitate a group. Ethical standards and best practice guidelines (American Counseling Association, 2014; Association for Specialists in Group Work, 2007) state that counselors in a group setting should discontinue services and provide appropriate referrals to avoid client abandonment.

Diversity Issues

Chapter 3 will review diversity issues in group work in greater depth. The major point of this section is to reinforce the concept that when group leaders are knowledgeable about diversity issues and skilled in the implementation of approaches to meet diverse member needs, leaders are behaving ethically. The group leader must be culturally competent and sensitive to personal and group member behaviors for the group to be successful (Cottone & Tarvydas, 2016). The ASGW developed the *Multicultural and Social Justice Competence Principles for Group Workers* (2012). These principles stress the need for the group leaders to be culturally sensitive and to understand how their cultural and diversity issues affect the group process and dynamics. Group leaders must also be aware of how the backgrounds of the members may influence their acceptance into the group and their behavior once in the group.

As part of their training, leaders should be able to identify, describe, and demonstrate skill in “use of personal contextual factors (e.g., family-of-origin, neighborhood-of-residence, organizational membership, cultural membership) in interpreting the behavior of members in a group” (ASGW, 2000, p. 6). Group workers who gain these skills and self-awareness are able to lead groups that are responsive to issues of diversity.

Legal Issues in Group Work

The discussion earlier in this chapter centered on codes of ethics and ethical behavior. Group leaders must also comply with those laws that apply to counseling practice. Laws are generally based on the same generally accepted norms, beliefs, customs, and values as ethical standards. However, laws are more prescriptive, have been incorporated into code, and carry greater sanctions or penalties for failure to comply. Both laws and ethical standards ensure appropriate behavior for professionals within a particular context, in turn to

ensure that the best interests of the members are met. When the two appear to be in conflict, the professional must attempt to resolve the conflict in a responsible manner. Remley and Herlihy (2014) suggested that there are few conflicts between laws and ethics in professional counseling. If a conflict does occur, group leaders must make their members aware of the conflict and their ethical standards. But because there are greater penalties associated with laws, the leader will often follow the legal course of action if there is no harm to the member. Many ethical standards recognize that other mandates must be followed and suggest that leaders work to change mandates that are not in the best interests of their members (Linde, 2019).

First and foremost, group leaders are governed by law. Before engaging in any form of counseling practice, a leader should become thoroughly grounded in the state statutes that regulate the practice of their profession. These statutes include the specific statute that establishes and regulates the practice of counseling, statutes that regulate a mental health care professional's duty to warn or protect third parties from harm threatened by a client, statutes that limit the conditions under which a client may claim privileged communication rights, and statutes that limit liability should a counselor breach confidentiality by reporting client communications to potential victims or to authorities. Although the Health Information Portability and Accountability Act (HIPAA) set stringent requirements for record keeping, billing, and protecting client health care data, the issue of confidentiality is a special problem for group workers. For counselors who conduct groups in schools, the most important law to be aware of is the Family Educational Rights and Privacy Act (FERPA) of 1974, which governs student records, including records of counseling sessions, but not personal notes.

Federal regulations may require and state statutes may entitle mental health professionals, like group leaders, to refuse to disclose privileged client communications, but client privilege may not extend to disclosures made by a client in a group setting. It is argued that client privilege only binds professionals, such as physicians, psychologists, and counselors, to maintain confidentiality. When a member discloses personal information in the presence of nonprofessional group members, the member has effectively waived privilege. Further, group leaders working with group members who have been mandated into treatment through court order may be required by the court to report attendance records and treatment information to the court as part of the order. Best practice dictates that group workers define confidentiality and its limits (e.g., mandated reporting requirements; waivers implicit when third parties, such as insurance companies, require documentation of treatment before they provide reimbursement), including the fact that legal privilege does not apply to disclosures made during the group, unless specifically provided by state statute (Best Practice Standard A.7.d, ASGW, 2007).

Several laws pertain to counseling records and are important to review. For counselors who work in schools, the Family Educational Rights and Privacy Act (FERPA) of 1974 governs student records, including records of counseling

sessions, but not personal notes. For counselors who practice privately or in other clinical settings, the Health Insurance Portability and Accountability Act (HIPAA) of 1996 governs client information. Both laws are discussed next.

The Family Educational Rights and Privacy Act (FERPA) of 1974

The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) of 1974 is the federal law that protects the privacy of all student records in all pre-K–12 schools, colleges, and universities that accept funding from programs administered by the U.S. Department of Education (USDE). It is often referred to as the Buckley Amendment. FERPA defines education records as all information collected by a school for attendance, achievement, group and individual testing and assessment, behavior, and school activities. It gives parents, guardians, and nonminor students specific rights regarding this information, including the right to inspect and review their children’s records (or their own records if the record holders are not minors) and the appeals process if they disagree with anything in the record. Second, the law limits who may access records. Under FERPA, only those persons with a “legitimate educational interest” can access a student’s record. Some personally identifiable information, usually referred to as directory or public information, may be released without parental or guardian consent and generally includes information such as the student’s name, address, telephone number, date and place of birth, honors and awards, and attendance information. The major exemption to the confidentiality of student records relates to law enforcement issues; the school must comply with a judicial order or lawfully executed subpoena. In cases of emergency, information about the student relevant to the emergency can be released without parental or guardian consent (see www.ed.gov/print/policy/gen/guid/fpco/ferpa/index.html for an electronic copy of the law). All states and local jurisdictions have incorporated FERPA’s requirements into state statutes and local policies that schools must follow.

The rights of consent transfer to students upon their 18th birthday or when they attend a postsecondary institution. However, the law was amended to give parents additional rights for their dependent children who attend postsecondary institutions. If the student is a dependent under Internal Revenue Service (IRS) rules, information can be given to the parent. Noncustodial parents have the same rights as custodial parents and guardians, unless a court order has limited or terminated the rights of one or both parents or guardians. Without court-appointed authority, stepparents and other family members who do not have legal custody of the child have no rights under FERPA.

FERPA requirements affect group work in public schools. Leaders conducting groups in schools must be aware of the limitations that FERPA may impose on any curriculum materials they use in groups, on any assessments used to identify or evaluate students in the group process, and on the types of information that should be kept in counseling notes. While some schools do not require signed, informed consent for participation in groups, professional school

counselors may want to consider using informed consent or assent forms to avoid problems, particularly if they are touching on sensitive areas.

Leaders also need to remember that parents and guardians have the right to access their children's records. FERPA delineates personal notes as separate from the educational record and therefore not subject to its provisions. However, counseling notes constructed by the school counselor may be construed as part of the educational record, and therefore subject to review or sharing with others, if a group leader reads from the notes or shares summary findings from the notes with colleagues from the school. Group leaders need to remember this when writing counseling notes. Once the personal notes are shared, the notes are no longer personal notes; they belong to the student's educational record.

The Health Insurance Portability and Accountability Act (HIPAA) of 1996

The Health Insurance Portability and Accountability Act (HIPAA) of 1996 required that the U.S. Department of Health and Human Services (HHS) adopt national standards for the privacy of individually identifiable health information, outlined patients' rights, and established criteria for access to health records. Included in this law was a provision that HHS must adopt national standards for electronic health care transactions. In response to this mandate, regulations named the Privacy Rule were adopted in 2000 and became effective in 2001. This rule set national standards for the protection of health information as it applied to health plans, health clearing houses, and health care providers who conduct transactions electronically (see www.hhs.gov/ocr/hipaa for an electronic copy of the law).

The HIPAA Privacy Rule gives patients the right to obtain and examine a copy of their health records and request corrections, allows individuals some ability to control the uses and disclosures of their health information, allows patients to know how their information might be used and if disclosures have been made, sets limits on the use and release of health records, and provides a complaint process, among other things. It also requires that providers give clients a privacy notice and should obtain a signed acknowledgment of this notice.

States and health entities continue to work on the details of the implementation of HIPAA. Clearly it has implications for group leaders, particularly those who work in health settings, clinics, agencies, and private practice. Leaders must be aware of this law and its requirements, and they must ensure that their practices, including records, are in accordance with its provisions, particularly if they receive payment through insurance companies or health organizations. Group leaders should also ensure that when client information is shared with insurance companies, health professionals, or institutions that they are adhering to HIPAA. It should be noted that the mandates of HIPAA are very consistent with ethical standards and therefore should not be a barrier to sound

professional practice. Signed, informed consent; limits to disclosure; and the confidentiality of patient information are all part of the ethical standards and should drive the practice of group leaders (Linde, 2019). As a final activity, test your understanding of ethical and legal issues in group work by reading and responding to the brief case dilemmas presented in Case Study 2.1.

Case Study 2.1 Ethical Cases

For each of the following cases:

- What are the applicable ethical, legal, and professional standards?
 - How will you handle the following ethical and legal scenarios?
 - What minor case detail changes might alter your intended course of action?
 - How will you document your actions?
1. Jonathan comes to group meetings very angry. He accuses Sam of divulging private information about him to other members outside the group—information Sam could only have known because Jonathan shared the information two sessions ago.
 2. Sam’s wife calls and tells you she is concerned about some information Sam divulged to her about another member in the group named Jonathan.
 3. Susan’s guardian called and wants an update on Susan’s progress in the grief and loss group.
 4. The mother of twins, Rowdy and Serenity, in your school called to ask if the twins could be included in the group counseling experience on grief and loss you intended to begin shortly. She indicated that her husband died less than six months ago and the twins are not adjusting as she had hoped.
 5. You are beginning a counseling group on substance abuse for current adolescent users and are wondering whether you should obtain parental and guardian consent.
 6. You are now in the sixth session of an eight-session group experience for adults who have experienced the loss of a spouse. Leroy has not said a word since introductions during session one. On several occasions, he has opted to “take a pass.” Several other group members have exchanged looks and seem uncomfortable with his lack of sharing.

7. The day after the sixth session of an eight-session group for adults who have lost spouses, you receive an email from Leroy telling you he is dropping out of group because other group members are giving him and each other looks; he feels uncomfortable sharing anything with them.
8. Juan's mother has asked you to testify in a child custody case on her behalf. Juan has been attending "changing family" group counseling sessions for the past two months. Her lawyer told her that your testimony and personal notes about how Juan feels about his father would help her to gain sole custody.

Summary

Ethical and legal issues are of particular import in counseling. Group work, like other forms of counseling, presents a variety of ethical issues, and it is critically important to be aware of codes of ethics, best practice guidelines, laws, and other resources that may help the leader determine the most appropriate course of action when conducting groups. FERPA governs sharing of student information in K–12 schools and universities that accept public funding and is overseen by the USDE.

The ACA (2014) *Code of Ethics*, HIPAA, FERPA, ASGW (2007) *Best Practice Guidelines*, and ASGW (2000) *Professional Standards for the Training of Group Workers* are all critically important documents for counselors conducting group work. All counselors conducting group work should be thoroughly familiar with all of them. Issues that will continue to challenge leaders striving for ethical counseling practice include confidentiality, informed consent, relationships among group members, counselor competence, diversity issues, and record keeping.

Activities

1. Promotion of autonomy facilitates independence of group members and their right to make their own decisions. Explain to the group members that everyone is allowed to hold their own beliefs and make their own decisions. Read a controversial scenario to the group. Remind the group of the accepted autonomy. Ask each member for his or her thoughts and opinions regarding the scenario. Discuss these opinions among the group members.
2. In a group discussion on group counseling or psychotherapy, clearly define who "the client" is. Discuss expectations and limits of confidentiality, and then have small groups of students write an agreement among involved parties who have the capacity to give consent.

3. As a group, discuss what confidentiality is and the limits of confidentiality in a group setting. Discuss when the professional counselor might have to break confidentiality and the possible consequences for breaking confidentiality. Ask students to describe confidentiality in their own terms and add several statements to a banner that will be hung somewhere in the classroom. Review the banner and imply that these ideas could become rules for group members.
4. Prepare an informed consent form that includes an explanation of the rights of every group member, the purpose of the group, expectations members can have, and an explanation that participation is voluntary.
5. To become aware of your own values and ideas about a given group topic, explore these values by speaking with a supervisor or coworker. Using self-reflection, examine your position on this issue and display a willingness to explore and accept diverse viewpoints, values, and beliefs.

Note

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