

I.R.E. 516. School Counselor-Student Privilege.

Idaho Rules of Evidence Rule 516. School Counselor-Student Privilege.

(a) Definitions. As used in this rule:

(1) Student. A "student" is a person regularly enrolled on a part-time or full-time basis in any public or private school located in the State of Idaho, who consults or is examined or interviewed by a school counselor.

(2) School counselor. A "school counselor" is any person duly appointed, regularly employed and designated for the purpose of counseling students by any public or private school located in the State of Idaho, or reasonably believed by the student so to be.

(3) Confidential communication. A communication is "confidential" if made to the school counselor while acting in the counselor's capacity as a school counselor or reasonably believed by the student to be so acting, and if not intended to be disclosed to third persons except persons present to further the interest of the student in the consultation, examination, or interview, or persons reasonably necessary for the transmission of the communication, or persons who are participating in the rendition of counseling services to the student under the direction of the school counselor, including members of the student's family.

(b) General rule of privilege. A student has a privilege in any civil or criminal action to which the student is a party to refuse to disclose and to prevent any other person from disclosing confidential communications made in the furtherance of the rendition of counseling services to the student, among the student, the student's school counselor, and persons who are participating in the counseling under the direction of the school counselor, including members of the student's family.

(c) Who may claim the privilege. The privilege may be claimed by the student, or for the student through the student's counselor, lawyer, parent, guardian or conservator, or the personal representative of a deceased student. The authority of the counselor, lawyer, parent, guardian, or conservator or personal representative to do so is presumed in the absence of evidence to the contrary.

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(d) Exceptions. There is no privilege under this rule:

(1) Civil action. In a civil action, case or proceeding by one of the parties to the confidential communication against the other.

(2) Proceeding for guardianship, conservatorship or hospitalization. As to a communication relevant to an issue in proceedings for the appointment of a guardian or conservator for a student for mental illness or to hospitalize the student for mental illness.

(3) Child related communications. In a criminal or civil action or proceeding as to a communication relevant to an issue concerning the physical, mental or emotional condition of or injury to a child, or concerning the welfare of a child including, but not limited to the abuse, abandonment or neglect of a child.

(4) Contemplation of crime or harmful act. If the communication reveals the contemplation of a crime or harmful act.

(Adopted January 8, 1985, effective July 1, 1985; amended June 15, 1987, effective November 1, 1987.)

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