

WHAT ARE YOUR EMOTIONS LIKE TODAY?

The Role of the Counselor



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1

Student Mental Health



2

In the words of school counselors across the U.S.*

“Kids have the highest level of anxiety I’ve ever seen: anxiety about basic safety and fear of what could happen.”
 – Susan Julien, Fall River Elementary School, Longmont, Colorado

“The foundational skills for learning need to be retaught.”

--Tierney Langdon, Grace Snell Middle School, Loganville, Georgia

“I’ve seen more physical fights this year than in my 15 years combined.”

-Julie Fleming, Ida B. Wells High School, Portland Oregon

*Excerpts from “362 School Counselors on the Pandemic’s Effect on Children: ‘Anxiety Is Filling Our Kids’”
 By Miller, C. and Pallaro, B., New York Times; www.nytimes.com/interactive/2022/05/29/upshot/pandemic-school-counselors.html



3

In the words of school counselors across the U.S.*

“Something that we continuously come back to is that our ninth graders were sixth graders the last time they had a normative, uninterrupted school year...Developmentally, our students have skipped over crucial years of social and emotional development.”

--Jennifer Fine
 Chicago, Ill.

Share of school counselors who said they noticed these student behaviors more often, compared to before the pandemic:

Behavior	% of Counselors
Trouble focusing on classwork	86%
Showing signs of anxiety/depression	94%
Trouble with emotional regulation	88%
Trouble solving conflicts with friends	73%
Harassing peers online	51%
Chronically absent from school	85%

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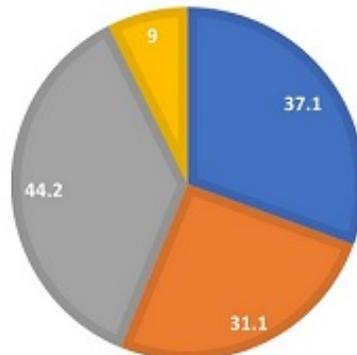


4

CDC April 2022

PERCENTAGE OF STUDENTS WITH MENTAL HEALTH STRUGGLES

■ Poor mental health during pandemic ■ Poor mental health past 30 days
■ Feelings of sadness/hopelessness ■ Attempted suicide



5

Recent Data on Gun Violence

Gun violence is an ongoing public health crisis in the United States that impacts the health and well-being of all of us. In 2020, gun deaths reached the highest number ever recorded. According to data released by Centers for Disease Control and Prevention (CDC), more than 45,000 people died by gun violence in the U.S. As we struggled against the COVID-19 pandemic, a concurrent public health crisis intensified. Gun homicides rose dramatically across the country, increasing by 35% in just one year.

Nearly 5,000 more lives were lost to gun homicide in 2020 than in 2019. Gun suicides remained at historically high levels. **Guns were the leading cause of death among children and teens in 2020, accounting for more deaths than COVID-19, car crashes, or cancers.**

 [A Year in Review: 2020 GUN DEATHS IN THE U.S. | The Johns Hopkins Center for Gun Violence Solutions \(April 28, 2022\);](https://publichealth.jhu.edu/sites/default/files/2022-05/2020-gun-deaths-in-the-us-4-28-2022-b.pdf)

 <https://publichealth.jhu.edu/sites/default/files/2022-05/2020-gun-deaths-in-the-us-4-28-2022-b.pdf>



6

U.S. Department of Education Recommendations in Response to Challenges Presented by the Covid-19 Pandemic

Challenges	Recommendations
1. Rising Mental Health Needs and Disparities Among Children and Student Groups	1. Prioritize Wellness for Each and Every Child, Student, Educator, and Provider
2. Perceived Stigma is a Barrier to Access	2. Enhance Mental Health Literacy and Reduce Stigma and Other Barriers to Access
3. Ineffective Implementation of Practices	3. Implement Continuum of Evidence-Based Prevention Practices
4. Fragmented Delivery Systems	4. Establish an Integrated Framework of Educational, Social, Emotional, and Behavioral-Health Support for All
5. Policy and Funding Gaps	5. Leverage Policy and Funding
6. Gaps in Professional Development and Support	6. Enhance Workforce Capacity
7. Lack of Access to Usable Data to Guide Implementation Decisions	7. Use Data for Decision Making to Promote Equitable Implementation and Outcomes

<https://www2.ed.gov/documents/students/supporting-child-student-social-emotional-behavioral-mental-health.pdf>

U.S. Department of Education, Office of Special Education and Rehabilitative Services, Supporting Child and Student Social, Emotional, Behavioral, and Mental Health Needs, Washington, DC, 2021.

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7

How many students are counselors serving?

To achieve maximum program effectiveness, ASCA recommends a student-to-school-counselor ratio of 250:1.

American School Counselor Association. (2019a). ASCA National Model: A framework for school counseling programs (4th ed.). Alexandria, VA: Author.

<https://www.schoolcounselor.org/Standards-Positions/Position-Statements/ASCA-Position-Statements/The-School-Counselor-and-School-Counseling-Program>

"It's just nonstop putting out fires with kids. We don't have the staffing to do preventative work, which is what we are trained to do."

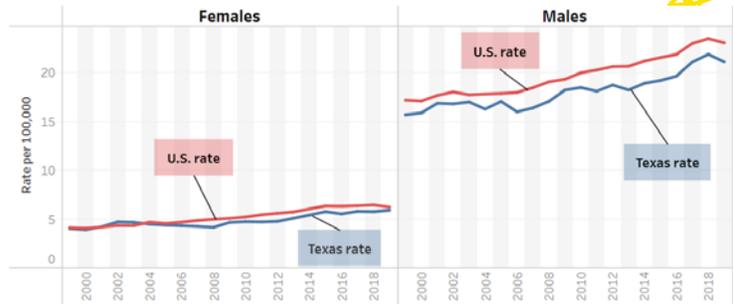
-Virginia DeLong
High School Counselor
Norwich, Conn.*

*Excerpts from "362 School Counselors on the Pandemic's Effect on Children: 'Anxiety Is Filling Our Kids'"
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8

**A TROUBLING TREND:
Suicide rates for all ages
have increased since 1999 and...**



Centers for Disease Control and Prevention, National Centers for Injury Prevention and Control. Web-based Injury Statistics Query and Reporting System (WISQARS) [online]. (2005) Accessed October 1, 2021. Available from: www.cdc.gov/injury/wisqars

9

Other factors, according to the counselors interviewed by the NYT

“Cyberbullying behaviors are through the roof! We deal with this almost on a daily basis.”
--Amy Riley, Mercer County Intermediate School, Harrodsburg, KY

Students were using computers “to attend school from home for so long, students are having trouble disconnecting, and more have had unrestricted access to the internet. Counselors connected that to an increase in age-inappropriate sexual behavior, drug use and vandalism. Thirty percent to 40 percent said they had seen an increase in each.”

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10



Special Education and Mental Health



11

Mental Health and Special Education



Questions and Answers On Individualized Education Programs (IEPs), Evaluations, and Reevaluations, 111 LRP 63322 (OSERS 2011).

Question E-2:

Is a public agency responsible for paying for mental health services if the IEP Team determines that a child with a disability requires these services to receive FAPE and includes these services in the child's IEP?

The IEP Team for each child with a disability is responsible for identifying the related services that the child needs in order to benefit from special education and receive FAPE...Mental health services provided as a related service must be provided at no cost to the parents. 34 CFR §§ 300.101 and 300.17.



12

Continued



An IEP Team may consider whether mental health services are provided as counseling services or social work services in schools. Counseling services are defined as including services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel. Social work services in schools includes group or individual counseling for the child and family. However, the public agency would not be responsible for paying for mental health services that constitute medical treatment for a child by a licensed physician except to the extent that the



13

When is counseling a related service?



- The difference is whether the student (a) qualifies for special education services and (b) is determined by an IEP team to require counseling services in order to receive an educational benefit.
- Additionally, special education counseling services should be directed at achievement of the student's goals and objectives.



14

How is counseling defined?



- Counseling services are those services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel. 34 CFR 300.34 (c)(2).
- Can a school counselor provide special education counseling? Yes. In Texas, holders of school counseling certificates may provide counseling to students in both general education and special education.

- What about a chatbot?



15

Could a social worker provide counseling?



- Social work services under the IDEA may include group and individual counseling with the child and family. 34 C.F.R. 300.34 (c)(14).
- See *City of Chicago Sch. Dist. 299*, 51 IDELR 172 (SEA IL 2008). Where a student no longer required the intervention of a social worker, the school district did not deny him FAPE when it no longer included counseling services in his IEP.



16

Who conducts Threat Assessments? (Summary)

- Under Title II of the ADA, a district must use reasonable judgment when conducting an individualized assessment, and look at current medical knowledge or the best available objective evidence to determine:
 - The nature, duration, and severity of the risk.
 - The probability that the potential injury will actually occur.
 - Whether reasonable modifications of policies, practices, or procedures -- or the provision of auxiliary aids and services -- will mitigate the risk.
- Under SB 11 (2019)
 - Requires the establishment of threat assessment teams for consisting of members appointed by the superintendent.
 - Members must have expertise in **counseling, behavior management, mental health and substance use, classroom instruction, special education, school administration, school safety and security, emergency management, and law enforcement.**
 - One threat assessment team may serve multiple campuses.



28 CFR 35.139 (b).



17

What about FERPA? Won't it keep me from sharing information from a threat assessment?

- Not necessarily. FERPA permits schools to disclose "personally identifiable information from an education record to appropriate parties, including parents of an eligible student, in connection with an emergency if knowledge of the information is necessary to protect the health and safety of the student or other individuals." 34 CFR 99.36 (a). See also *Letter to Anonymous*, 53 IDELR 235 (EDU 2008).



18

FERPA, continued



In making a determination under paragraph (a) of this section, an educational agency or institution may take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals. **If the educational agency or institution determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals.** If, based on the information available at the time of the determination, there is a rational basis for the determination, the Department will not substitute its judgment for that of the educational agency or institution in evaluating the circumstances and making its determination. 34 CFR 99.36 (c).



19

Last Legislative Session: SB 179

School district board of trustees shall adopt a policy that requires a school counselor to spend at least 80% of their total work time on duties that are components of a counseling program. Time spent administering assessment instruments (excluding time spent in interpreting data from assessment instruments) is not considered time spent towards counseling. If a counselor needs to spend less than 80% of time on counseling due to staffing needs, the district must list why, make a list of non-counseling duties, and allocate percentage of work time counselor must spend on counseling. This list must be addressed annually.

Last Legislative Session: SB 279

Requires suicide prevention information to be printed on public school students' IDs in grade six and higher. The ID card must have on it the contact information for the National Suicide Prevention Lifeline and the Crisis Text Line and may include contact information for a local suicide prevention hotline.



20

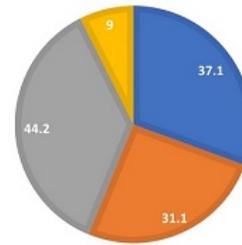


Local Preparation is Key

- Be prepared for increased staffing needs in the areas of counseling, psychological services, and social work services.
- Watch child find needs in the area of referrals for mental health issues
- Watch for issues related to student violence

PERCENTAGE OF STUDENTS WITH MENTAL HEALTH STRUGGLES

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21

Case Examples



22

ISD No. 283 v. E.M.D.H., 76 IDELR 203, (8th Cir. 2020)



The court held that the district failed in its child find responsibility. This girl was “disenrolled” by the district in 8th grade, 9th grade, and twice in 10th grade, each time due to the student’s failure to attend school. At no point did the district refer the child for special education testing, despite its knowledge of several mental health diagnoses. The court drew a distinction between those students who willfully refuse to attend school vs. those with significant mental health issues:

The Student was absent from the classroom not as a result of “bad choices” causing her “to fail in school,” for which the IDEA would provide no remedy, but rather as a consequence of her compromised mental health, a situation to which the IDEA applies.

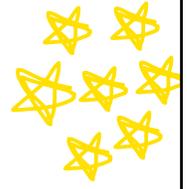
The court described the student as having “a panoply of mental health issues that have kept her in her bedroom, socially isolated, and terrified to attend school.”

Comment: consistent failure to attend school is a red flag. Not all students who fail to show up are doing so because of a disability. But some are. The district would be wise to pause and look into it.



23

Rocklin USD v. J.H., 80 IDELR 165 (E.D. Cal. 2022)



The court held that the district failed to comply with Child Find when it declined to determine a student eligible in 2018. The court deferred to the judgment of the hearing officer who conducted an eight-day hearing and issued a 57-page decision. The court faulted the district for relying too much on the student’s academic success while “discounting his need for mental health services and assistance with his interpersonal skills.” The court noted that “mental health services ‘specially designed’ for a student can be a special service under IDEA.”



24

J.S. v. Keystone Oaks School District, 76 IDELR 125 (W.D. Pa. 2020)



The district placed the student in a more restrictive setting based largely on concerns about safety. The hearing officer ruled in favor of the district and the federal district court affirmed, but the opinion provides little analysis. What's noteworthy about the case is how concern over the safety of one particular student led the district to take strong action. There had been a few incidents between a boy and a girl, and the district had addressed both students in an effort to ensure safety. But it came to a boiling point when the student revealed his thinking to the principal:

During that interview, Principal Kattan asked [the student] how he would feel if, hypothetically, the female student became involved in a romantic relationship with another person. [The student] responded that he would light the person on fire with gasoline and matches, and that he would do the same to a future spouse should the female student marry in the future.

The court upheld the decision, applying the 3rd Circuit's LRE test, which is slightly different from the Daniel R.R. test we use in the 5th Circuit. The court held that the student's mental health needs required a more restrictive setting.



Washington v. Katy ISD, 80 IDELR 67 (S.D. Tex. 2022)



The court affirmed the hearing officer's decision in favor of the district, holding that the district provided FAPE, despite a traumatic event involving an SRO tasing the student. After the tasing, the student did not attend school much at all. He missed 98 days of school in the spring of 2017, and 200 days over all in 2017 and 2018. However, there was evidence of good performance when the student was in school, and there was a lot of evidence of the district's good faith efforts.



Continued

Comment: Much of the decision is based on the interactions of the parties after the tasing incident. The court noted a few factors that seemed to tilt the decision in favor of the district:

- “Multiple employees reached out to [the mother] after the tasing incident.”
- The assistant principal and [the mother] discussed the tasing incident, but [the mother] ended the phone call before the assistant principal could fully explain.”
- The district pointed out that the mother had testified that she had spoken to the diagnostician “billions” of times; to one of the teachers “frequently,” to another teacher “every other day.” This undercut the allegations that the district had been non-communicative.
- The mother declined to give consent for district staff to discuss the student with some of his outside mental health providers.
- The district recommended ESY, but the mother declined to accept the district’s offer of transportation for this.

It was difficult to schedule an ARD meeting, due in part to non-responsiveness from the parent.

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27

A.H. v. Arlington School Board, 78 IDELR 224 (E.D. Va. 2021)

- The court denied the request for reimbursement. The court held that the residential placement in Utah was for mental health, rather than educational reasons, and was not the LRE for the student. Key Quotes:
- Even though mental health issues can interfere with academic progress, the IDEA does not make public school systems responsible for residential placements that primarily address mental health issues.

As this record shows, plaintiff was able to progress academically despite suffering from significant mental health issues.

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28



Resources



29

Resources



Texas Education Agency School Behavioral and Mental Health Services
<https://tea.texas.gov/about-tea/other-services/mental-health/mental-health-and-behavioral-health>

<https://tea.texas.gov/about-tea/other-services/mental-health/early-mental-health-intervention>

NAMI : <https://www.nami.org/Advocacy/Policy-Priorities/Improving-Health/Mental-Health-in-Schools>

Texas School Mental Health : <https://schoolmentalhealthtx.org/>

U.S. Department of Education Supporting Child and Student Social, Emotional, Behavioral, and Mental Health Needs : <https://www2.ed.gov/documents/students/supporting-child-student-social-emotional-behavioral-mental-health.pdf>



30

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