

SACPS

Sexual Assault
Communications Privilege
Service

Sexual assault victims counselling notes – information for schools, universities and colleges

The Privilege – schools, universities and colleges

The Sexual Assault Communications Privilege (SACP) is a set of rules which apply to **criminal proceedings and Apprehended Violence Orders (AVOs)**. The privilege affects subpoenas in these matters.

If **a person has ever reported being a victim of sexual assault**, the SACP rules say that all counselling communications by, to or about that person (called the protected confider) are protected confidences. Protected confidences are privileged. The *protected confidences* do not need to be about the sexual assault to be privileged.

Privileged material **cannot be subpoenaed or used in evidence** without permission (called “leave”) from the court.

What is privileged?

The definition of counselling is very broad and includes “listen and give verbal support to” if it is in a confidential setting.

In education, this could include:

- school counsellor’s records
- notes made by a school nurse, social worker or student support worker doing social work

What you should do

If your school receives a subpoena for a criminal proceeding seeking records of a young person and you are aware that the young person is a complainant in a sexual assault trial or is a victim of sexual assault, the documents requested should be checked to see if they contain any:

1. School counselling notes or social work notes.
2. Copies of medical records or reports provided to the school – particularly any records that relate to mental health.

These notes, records and reports are likely to be privileged. If they are captured by the subpoena, then the subpoena may be invalid unless it was issued with leave of the court.

If you believe that the subpoena includes privileged material:

1. Check the subpoena and the correspondence accompanying it for any indication that leave was granted, such as a copy of a court order granting leave.
2. Contact the registry of the issuing court and ask which judge or magistrate granted leave to issue the subpoena and on what date.

The SACP Service at Legal Aid NSW can give legal advice. We can help to identify privileged material, and can confirm whether a court has given leave for a subpoena.

Assistance from Legal Aid NSW

The Sexual Assault Communications Privilege Service (SACPS) assists professionals when responding to subpoenas that seek privileged documents that they hold. We also provide lawyers for sexual assault victims who are enforcing their rights over their counselling information.