



SCHOOL COUNSELOR LEADERSHIP NETWORK

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LEADERSHIP NETWORK

SCHOOL COUNSELOR



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LEADERSHIP NETWORK**
RIVERSIDE COUNTY
ON-THE-GO WEBINAR SERIES

Legal and Ethical Best Practices for Counseling Notes and Tracking Your Time With The New ASCA MAPP APP!

**Riverside County Office of Education
College Career Readiness
School Counselor On The Go Series**

College & Career Readiness Unit

Meet Our Team



Catalina Cifuentes
Executive Director



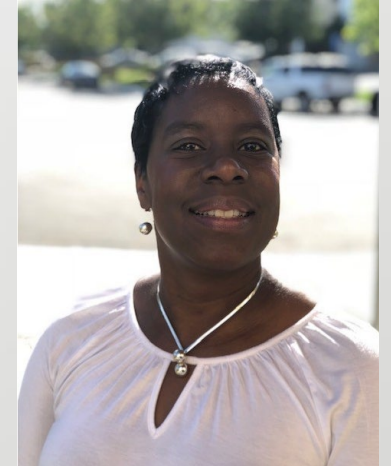
Gil Compton
Director I



Matt Elder
Director I CalSOAP



Yuridia Nava, Ed.D.
*Coordinator
College Career
Readiness*



Erika Bennet
*Coordinator
College Career
Readiness*



Virtual Meeting Tips

1. This meeting is being recorded so that others may listen to it at a later time for reference. The recording will be uploaded to the RCEC YouTube page, as well as www.rcec.us. Once you log in, you'll be able to access the content of the webinar series.
2. All connections to this live meeting feature have been accounted for. Please do not forward the Zoom link or invite anyone to join. In doing so, you will be taking someone else's spot and Zoom will automatically start kicking off connections randomly.
3. Please use the chat feature to ask your questions.

****Every effort has been made to ensure the security of this webinar from “zoom-bombers”, but in the event that we experience that, please stay calm and we will resume as soon as the technical difficulties have been resolved.****



Meet Your Presenters



Wendy Rock, Ph.D., LPC-S, NCC, NCSC; Assistant Professor

Southeastern Louisiana University, School Counseling Program Coordinator

A professional school counselor with almost two decades of experience, Dr. Rock joined the faculty at Southeastern full-time in the fall of 2017 as an assistant professor. She is a licensed professional counselor/board-approved supervisor, nationally certified counselor, and nationally certified school counselor. She currently serves as the school counseling coordinator. Dr. Rock received her M.Ed. from the University of Texas at Austin in Educational Psychology (concentration in school counseling) and her Ph.D. from the University of Holy Cross (New Orleans) in Counselor Education and Supervision. Her leadership and service to the school counseling profession include serving as a past president of the Louisiana School Counselor Association. She is a past co-Chair of the American School Counselor Association (ASCA) Positions Statement Committee, a past member of the Louisiana High School ReDESIGN Professional School Counseling Task Force. She is a member of the Louisiana ACT Council, Associate Editor for Professional School Counseling, an Editorial Board Member of The Professional Counselor, a member of the national ACT Steering Committee, and Assistant Chair of the ASCA Ethics Committee. She received a 2021 Louisiana Counseling Association (LCA) President's Award, the 2019 LCA Advocacy Award, was awarded both the LCA and LSCA Advocacy Awards in 2009, and was recognized as the 2006 LSCA High School Counselor of the Year.

Eric Sparks is Deputy Executive Director for the American School Counselor Association (ASCA)

Dr. Sparks facilitated the development of the *ASCA National Model: A Framework for School Counseling Programs (3rd and 4th ed.)*, the ASCA Student Standards: Mindsets & Behaviors for Student Success, and the ASCA School Counselor Professional Standards and Competencies. He is a former high school counselor and Director of School Counseling for the Wake County Public School System (NC). He has also served the school counseling profession as President of ASCA and the North Carolina School Counselor Association. Sparks is a school counseling graduate of North Carolina State University and earned a doctorate in Education Leadership from the University of North Carolina – Chapel Hill.





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Family Educational Rights and Privacy Act of 1974

“The Family Educational Rights and Privacy Act (FERPA) is a federal law that affords parents the right to have access to their children’s education records, the right to seek to have the records amended, and the right to have some control over the disclosure of personally identifiable information from the education records. When a student turns 18 years old, or enters a postsecondary institution at any age, the rights under FERPA transfer from the parents to the student (“eligible student”). ”

<https://studentprivacy.ed.gov/faq/what-ferpa>



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What is an “Education Record?”

An “education record” is any record, with certain exceptions, maintained by an institution that is directly related to a student or students. This record can contain a student’s name(s) or information from which an individual student can be personally (individually) identified.

These records include: files, documents, student papers, and materials in whatever medium (handwriting, print, tapes, disks, film, microfilm, microfiche), which contain information directly related to students and from which students can be personally (individually) identified.



What is Not Considered an Education Record?

- “Sole Possession” notes
- Law enforcement unit records
- Records maintained exclusively for individuals in their capacity as employees
- Records of individuals who are employed as a result of their status as students (work study) are education records
- Medical & Treatment records
- Alumni records



What are sole-possession records?

Sole-Possession Records:

“exempted from the definition of educational records and the protection of FERPA, are records used only as a personal memory aid that are kept in the sole possession of the maker of the record and are not accessible or revealed to any other person except a temporary substitute for the maker of the record and provide only professional opinion or personal observations” (ASCA Ethical Standards for School Counselors, 2016).



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“Sole Possession Notes”

These are made by one person as an individual observation or recollection, are kept in the possession of the maker, and are only shared with a temporary substitute.

- This term has always been narrowly defined
- Notes taken in conjunction with any other person are not sole possession notes (advisor’s notes, interview notes)
- Sharing these notes with another person, or placing them in an area where they can be viewed by others, make them “education records” and are subject to FERPA
- Emails can never be sole possession
- Best advice: If you don’t want it reviewed, don’t write it down.



Scenario

- Southeast Texas School
- Title IX coordinator investigates a complaint filed by a student
- The student alleged she had been harassed by another student
- The Title IX coordinator interviews all students who may have witnessed the alleged harassment individually, and privately and takes notes
- Witnesses were not asked to review notes for accuracy and the notes were not shared with anyone
- The notes were maintained in the Title IX coordinator's office in a locked cabinet, no other person had access to the notes
- The notes were reviewed by the Title IX coordinator to prepare a report but were not disclosed to anyone
- Several years later, the student who made the accusation became aware of the existence of the notes
- The student requested the notes, since under FERPA she had a right to examine education records
- The Title IX coordinator was advised by legal counsel that the notes were "sole possession records", thus they were not education records and the student was not entitled to review them
- The student filed a complaint with the Family Policy Compliance Office, claiming her "right to access" under FERPA had been denied

How do you think the FPCO responded?

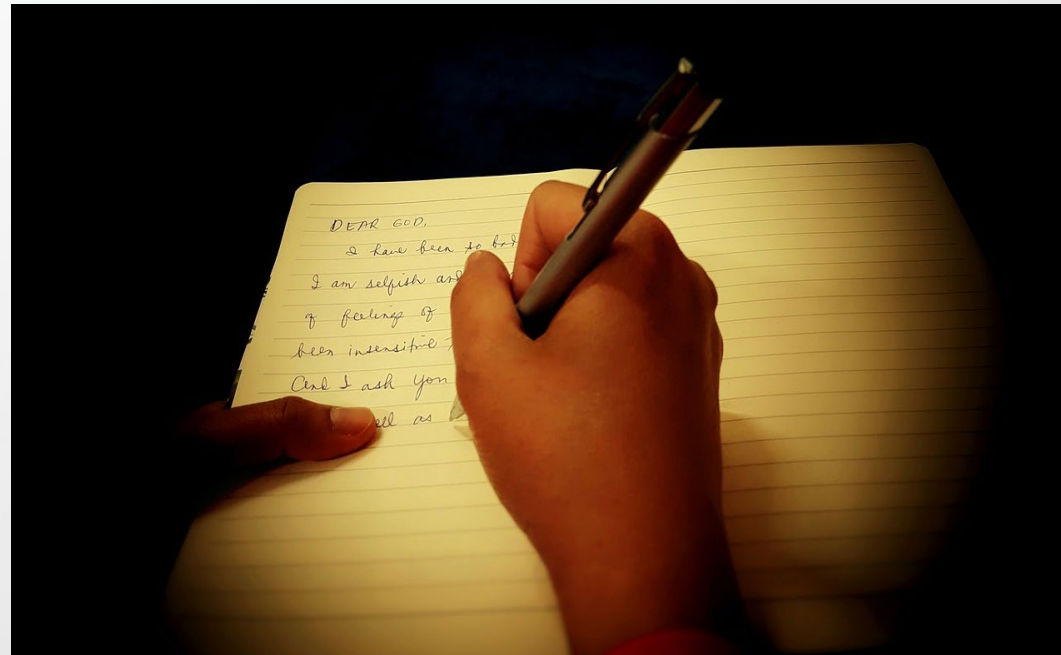
Are a school counselor's notes sole possession records???





Sole-Possession Records and FERPA

If our case notes are not sole-possession records, meaning they meet the criteria, then we are legally required to respect the spirit and intent of FERPA and provide these case notes as education records to the requesting parent.

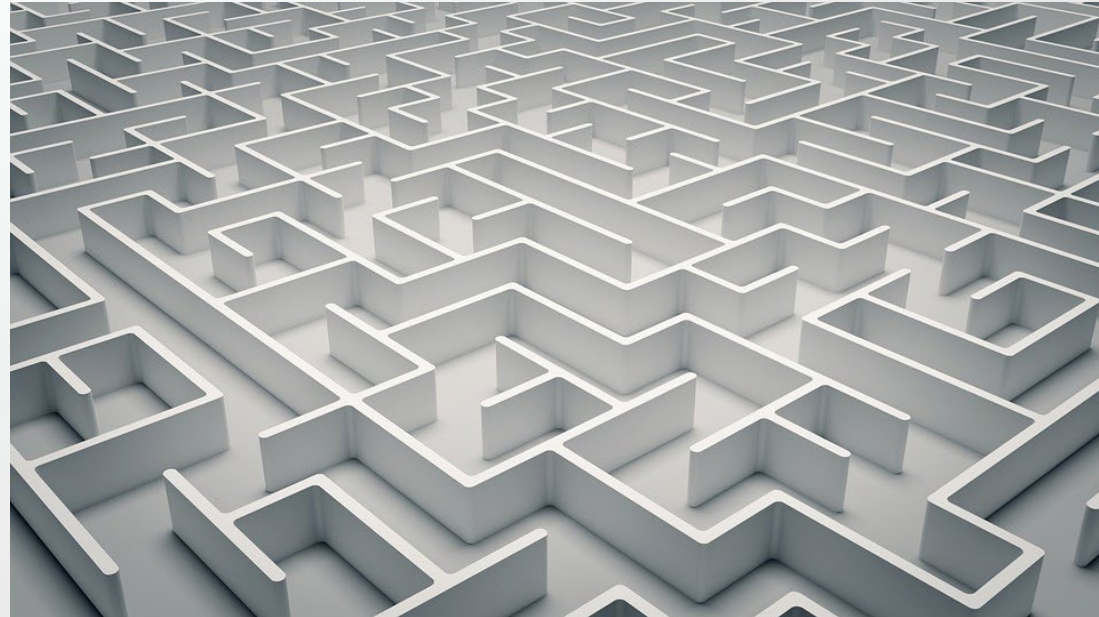




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Legal and Ethical Considerations, A.12.c

Recognize the difficulty in meeting the criteria of sole-possession records.





Legal and Ethical Considerations, A.12.d

Recognize that sole-possession records and case notes can be subpoenaed unless there is a specific state statute for privileged communication, expressly protecting student/school counselor communication.





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Legal and Ethical Considerations, A.12.f



Establish a reasonable timeline for purging sole-possession records or case notes. Suggested guidelines include shredding paper sole-possession records or deleting electronic sole-possession records when a student transitions to the next level, transfers to another school or graduates. School counselors do not destroy sole-possession records that may be needed by a court of law, such as notes on child abuse, suicide, sexual harassment or violence, without prior review and approval by school district legal counsel. School counselors follow district policies and procedures when contacting legal counsel.

Legal Guidance

Patterson, Buchanan, Fobes, & Leitch, Inc., P.S.

FERPA Exempt Sole Possession Notes	Not Exempt as Sole Possession Notes
<ul style="list-style-type: none"> • Private note created solely by the person possessing it • Information for personal memory aid • Exclusive control of creator • Information is not shared with anyone, except a substitute • Stored separate from school counseling files • Includes observations and personal opinions 	<ul style="list-style-type: none"> • Notes containing information about the substance of the interactions, particularly the content of the conversation • Stored in student counseling file • Private notes made by a counselor that records comments made by parents, students, or other school employees during a conversation • Notes detailing an observation of a student when the observation is later shared with another district employee • Notes that have been shown to another person • Notes saved on the District server

https://resources.finalsite.net/images/v1576003301/monroewa/cdwlsgh7bzajazkxhjej/Ferpa_and_Private_Notes.pdf

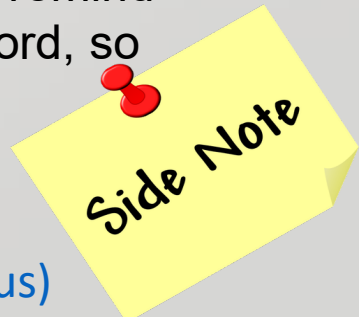
Complaint 1251, 2005

The Salem-Keizer School District in Oregon was found to have violated FERPA by refusing to allow a parent to inspect and review her daughter's speech logs and other records, documenting services provided by clinicians, including the clinicians' observations regarding the student's progress. The district argued these were sole-possession records.

The Family Policy Compliance Office (FPCO) explained that the provision regarding use of a record "only as a personal memory aid" was added in the Final Rule issued on July 6, 2000. The Department explained that "we sought to clarify that 'sole possession records' do not include evaluations of student conduct or performance."

It was further explained that "the main purpose of this exception to the definition of "education records" is to allow school officials to keep personal notes private. For example, a teacher or counselor who observes a student and takes a note to remind himself or herself of the student's behavior has created a sole possession record, so long as he or she does not share the note with anyone else."

<https://www.wrightslaw.com/info/ferpa.ltr.baker.052306.pdf>





Complaint 1251, 2005, cont.

Notes about students prepared by school officials (such as teachers, speech-language therapists, clinicians, etc.) are not considered "personal" merely because they are kept in the school official's office or desk drawer, have not been shared with anyone, or are used to prepare "official" or "final" reports. Rather, in order to qualify for this exception, the notes or other record must be kept in the sole possession of the maker (except a temporary substitute) and be used only as a personal memory aid. That is, the exception for "sole possession records" is intended to protect "personal notes" used to jog a teacher's memory about a particular matter or event, such as a note reminding the teacher to call a parent or that the student was disruptive during play time. It is not intended to exclude from the definition of "education records" detailed or comprehensive notes that record specific clinical, educational or other services provided to a student, or that record the school official's direct observations or evaluations of student behavior, including the student's success in attaining specified objectives.

<https://www.wrightslaw.com/info/ferpa.ltr.baker.052306.pdf>



Alaska Department of Education and Early Development (DEED)

An Alaska school district successfully argued that the “sole possession” exception applied against a FERPA due process claim brought on behalf of a student’s parent. The school refused to hand over personal notes, claiming that the notes were not part of the student’s educational records. The DEED reasoned that the FERPA “sole possession” exception – which allows school officials to keep private personal notes that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person – applied to the school’s refusal to hand over the documents because of the nature of the notes. Here, the DEED found that the notes were used to aid memory to provide feedback to staff regarding the implementation of the student’s individualized education plan, rather than remarking on specific services provided to the student.

<https://www.natlawreview.com/article/what-s-mine-not-yours-school-districts-reminded-ferpa-s-sole-possession-exception>



Scenarios

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Scenario #1

I am wondering about the use of Google Drives and districts viewing work done using Google Drives with the district email provided to me. I don't keep notes about students' time with me on the Google Drive as I did not feel that was appropriate; however, I have used the drive to take notes during staff meetings about specific students and have added my personal thoughts in them. Would these be protected and confidential?





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Scenario #2

I have a parent reaching out to me requesting my notes for a custody battle. I am not sure how to respond to the parent. Ideally, I would like to stay out of custody situations. I don't have technical notes, just little notes that I do to keep track of on the student. For example, the times we met and general ideas covered but nothing official or anything. I would love your guidance on how to proceed with parents. Do I need to release the notes? Should I write a separate letter summarizing what was covered?



Scenario #3

I only keep sole possessory notes and the subpoena specifically includes a request for "counselor notes" among many other things related to their records. I am of the opinion that my notes do not qualify as "counselor notes" that are a part of the student's records because they meet the requirements for sole possessory notes. Am I within my rights to refuse to provide them?



Documentation



It is critical to document certain situations, for example:

1. When a student expresses suicidal ideation
2. When a student threatens harm to someone else
3. Child abuse
4. Bullying
5. Anything that could potentially be a legal situation
6. What else????



FERPA Information Sources

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Ave., SW
Washington, D.C. 20202-5920

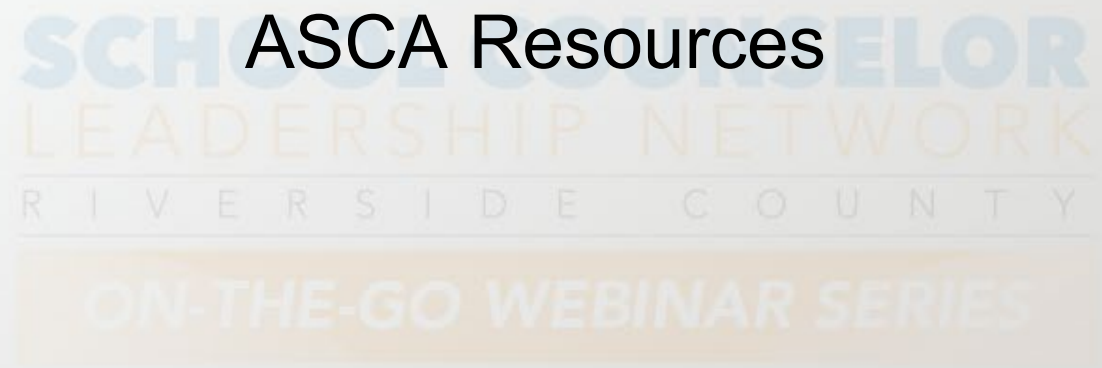
1-855-249-3072 (phone)

<https://studentprivacy.aem-tx.com/contact>



Tracking Your Time

ASCA Resources





A minimum of
80%
of a school
counselor's time
should be spent in
direct and indirect
student services.



Instruction



Appraisal/Advisement



Counseling



Referrals



Consultation



Collaboration



No more than
20%
of a school
counselor's time
should be spent in
program planning
and school support
activities.



Program
Planning

Fair Share
Responsibilities



Use of Time 5 Day Calculator



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		School Counselor Name:			DATE:		
Time frame	Activity or Task	Direct Student Services			Indirect Student Services	Program Planning and School Support	School-Counseling Tasks
		Instruction	Appraisal & Advisement	Counseling	Referrals/ Consultation/ Collaboration	Defining, Managing, Assessing Activities	Fair-Share Responsibility Activities
7-7:15 a.m.	parent conference 5th grade student				x		
7:16-7:30 a.m.	parent conference 5th grade student				x		
a.m.	data collection					x	
7:46-8 a.m.	data collection					x	
a.m.	data collection					x	
a.m.	data collection					x	
a.m.	data collection					x	
8:46-9 a.m.	5th grade career lesson (Smith)	x					
a.m.	5th grade career lesson (Smith)	x					
a.m.	5th grade career lesson (Smith)	x					
a.m.	5th grade career lesson (Jones)	x					
a.m.	5th grade career lesson (Jones)	x					
10:01-10:15 a.m.	5th grade career lesson (Jones)		x				
10:16-10:30 a.m.	Student 2nd goal check		x				
10:31-10:45 a.m.	Student 2nd goal check		X				
a.m.	K lunch duty						X
11:01-11:15 a.m.	K lunch duty						X
11:16-11:30 a.m.	K lunch duty						X
11:31-11:45 a.m.	5th grade career lesson (Johnson)	x					
11:45 a.m. - Noon	5th grade career lesson (Johnson)	x					
12:01-12:15 p.m.	5th grade career lesson (Johnson)	x					
12:16-12:30							



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▶	Directions	Sample	Monday	Tuesday	Wednesday	Thursday	Friday	Charts ..
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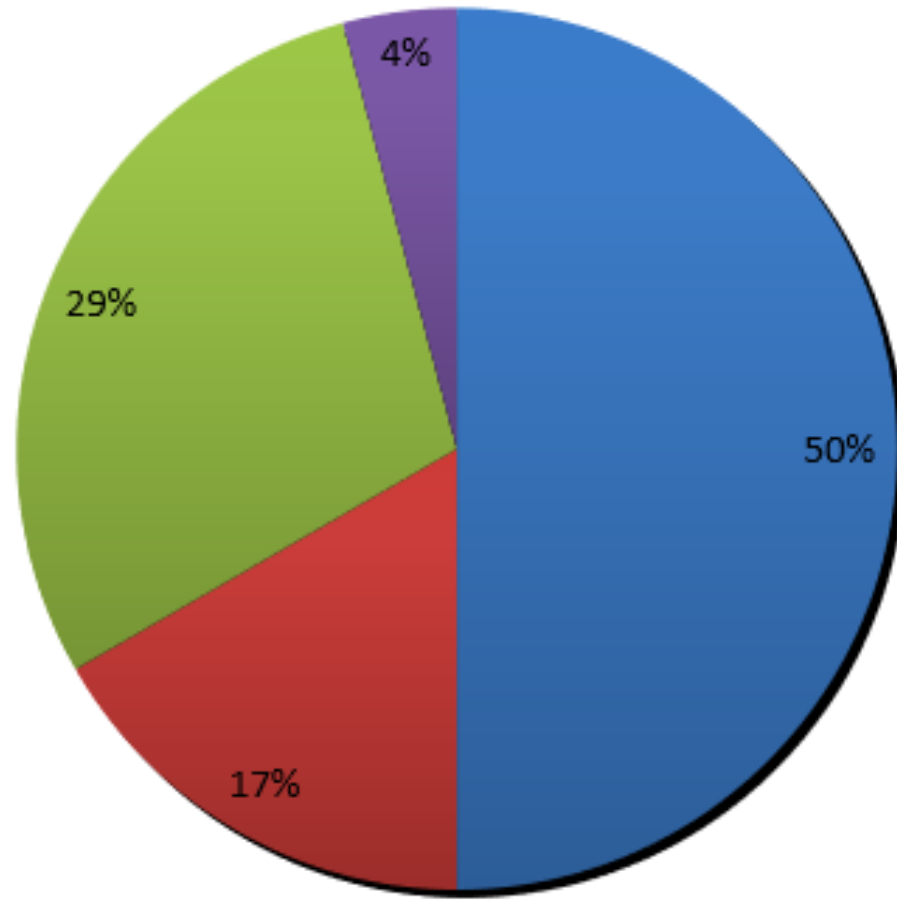
TOTALS		8	6	7	6	3	4	0
% per topic		24%	18%	21%	18%	9%	12%	
% per category		62%			18%	21%		



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EDWIN GOMEZ, Ed.D.
County Superintendent of Schools



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■ Direct Student Services

■ Indirect Student Services

■ Program Planning and School Support

■ Non-School Counseling Tasks

ASCA National **M** **APP** **C** **D** **E** **L**







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mapp.ramp4.org



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**FREE TO
MEMBERS**

ASCA National
MAPP MODEL

HOME

Welcome to MApp!
The Recognized ASCA Model Program (RAMP). Work on your applications and track your progress.

MAPP APPLICATIONS

BEGIN ACSC CERTIFICATION

TRACK TIME

ASCA National MAPP MODEL

HOME

Welcome to MApp!

The Recognized ASCA Model Program (RAMP). Work on your applications and track

 MAPP APPLICATIONS

 BEGIN ACSC CERTIFICATION

 TRACK TIME



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ASCA National MAPP MODEL

TIME ENTRY

Date	Feb 12, 2021
Start Time	1:36 PM
End Time	1:36 PM
Category	Dir - Instruction ▾
Miscellaneous	
Location	
Notes	

SUBMIT TIME ENTRY

[Calendar] [Back] [Close]

Track MApps More.. Back

Category

- Dir - Instruction
- Dir - Appraisal/Advise...
- Dir - Counseling
- Indirect
- Managing/Assessing
- Fair-share
- Non SC

CANCEL

SELECT

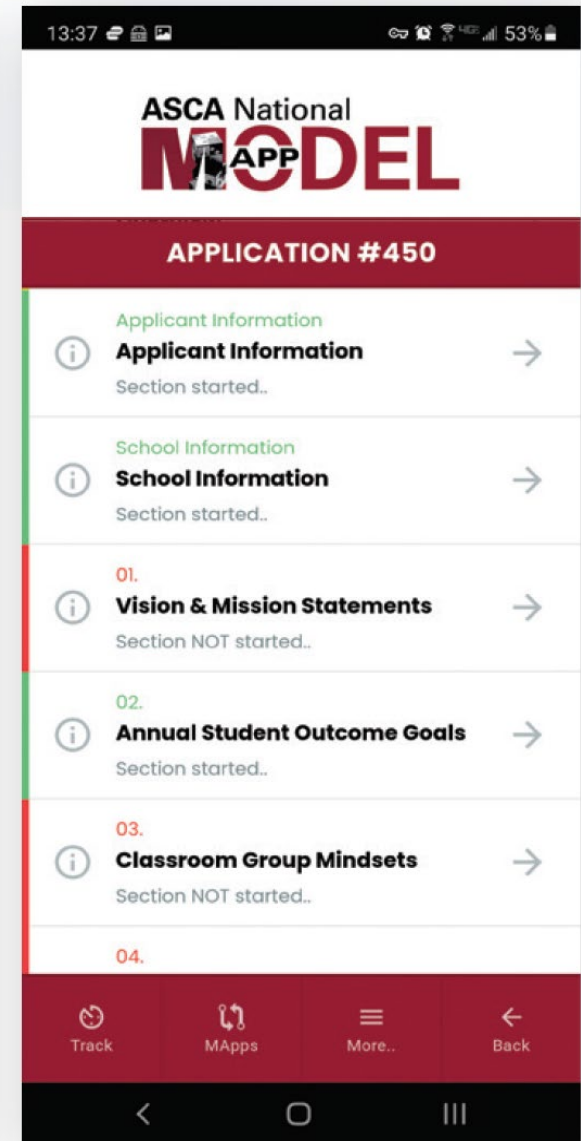


SUBMIT TIME ENTRY





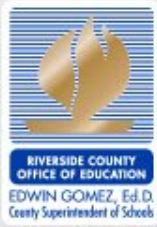
- Vision/Mission
- Annual Student Outcome Goals
- Classroom, Group and Mindsets & Behaviors Action Plan
- Annual Administrative Conference
- Advisory Council
- Calendars
- Classroom and Group Lesson Plans
- Classroom and Group Results Reports
- Closing-the-Gap Results Reports



MApp Your Program



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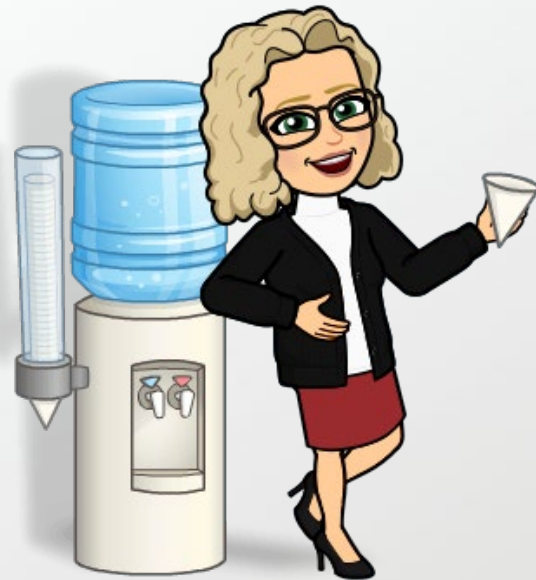
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Questions?





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We are here to support you!

Please reach out to College and Career Readiness with any needs at your school site, professional development topics, or general questions at:

Dr. Yuridia Nava

ynava@rcoe.us

thank you!