

Ethical Issues in School Psychology: Hot Topics

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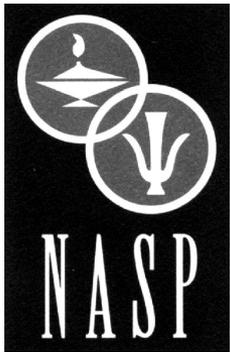
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What are ethics?

- Ethics are composed of a range of acceptable (or unacceptable) social and personal behaviors, from rules of etiquette to more basic rules of society.
- Develop within the context of a particular society or culture.
- W. D. Ross (1930), a 20th-century Scottish philosopher, identified these as the moral duties of the ethical person:
 1. Nonmaleficence
 2. Beneficence
 3. Fidelity
 4. Justice
 5. Autonomy

Applied professional ethics

The application of broad ethical principles and specific rules to problems that arise in professional practice.

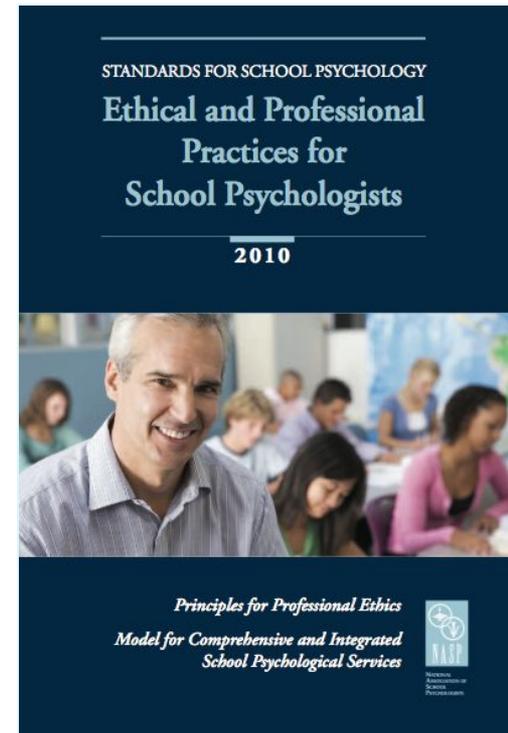


Professional guidelines

- NASP 2010 *Principles for Professional Ethics*
- NASP 2010 *Model for Comprehensive and Integrated School Psychological Services*
(not adjudicated)
- Available at www.nasponline.org
- Other codes: American Psychological Association and Canadian Psychological Association

Codes of ethics

- Protect the public and maintain public trust.*
- Show profession's commitment to self-regulation.
- Enhance prestige of a profession.
- Educate professionals and assist them in monitoring their own behavior. (Also now readily available to parents).
- Guidelines for adjudicating complaints.



NASP's *Principles for Professional Ethics* (2010)

- The NASP's 2000 code was based on the roles and clientele of school psychologists. In contrast, four broad ethical themes provide the organizational framework for the 2010 code.
- Like its precursor, the 2010 code focuses on protecting the well-being of schoolchildren and takes into account the special considerations of school-based practice.
- 2010 code marks the continued emergence of school psychology as a unique discipline separate from clinical psychology.

NASP's *Principles for Professional Ethics*

Four broad ethical themes*

- I. Respecting the Dignity and Rights of All Persons
- II. Professional Competence and Responsibility
- III. Honesty and Integrity in Professional Relationships
- IV. Responsibility to Schools, Families, Communities, the Profession, and Society

* Themes adapted from A Canadian Code of Ethics (2000). The Canadian code was particularly influential because of its emphasis on the responsibility of psychologists to promote healthy environments (an ecological perspective) and its emphasis on special obligations to vulnerable individuals, including children, and to persons who have faced societal discrimination.

Emphasis on School-based Practice

- *For the purposes of the ethics code, school-based practice* means the provision of school psychological services under the authority of a state, regional, or local educational agency whether the school psychologist is an employee or contracted by the schools on a per case or consultative basis.
- *Private practice* occurs when a school psychologist enters into an agreement with a client(s) rather than an educational agency to provide school psychological services and the school psychologist's fee for services is the responsibility of the client or his or her representative.

Special Considerations of School-based Practice

- School psychologists must “balance the authority of parents to make decisions about their children with the needs and rights of those children, and the purposes and authority of schools.” Within this framework, school psychologists “consider the interests and rights of children and youth to be their highest priority in decision making. . .” (NASP-PPE Introduction).
- The mission of schools is to maintain order, ensure pupil safety, and educate children. As school employees, “school psychologists have a legal as well as an ethical obligation to take steps to protect all students from reasonably foreseeable risk of harm” (NASP-PPE Introduction).

Special Considerations of School-based Practice (Cont).

- As school employees, school psychology practitioners are *state actors*; that is, their actions are seen to be an extension of the state's authority to educate children. This creates a special obligation for school psychologists to know and respect the rights of schoolchildren under federal and state law (NASP-PPE Introduction).
- “School-based practitioners work in a context that emphasizes multidisciplinary problem solving and intervention” (NASP-PPE Introduction).

Definitions: Client and Establishing a School Psychologist-Client Relationship

“Client: The client is the person or persons with whom the school psychologist establishes a professional relationship for the purpose of providing school psychological services. A school psychologist–client professional relationship is established by an informed agreement with client(s) about the school psychologist’s ethical and other duties to each party. While not clients per se, classrooms, schools, and school systems also may be recipients of school psychological services and often are parties with an interest in the actions of school psychologists. “

Special Considerations of School-based Practice (Cont).

Like other mental health practitioners, school psychologists often provide services within the framework of an established psychologist-client relationship. **However, at other times, may provide consultative services to student assistance teams, classrooms, schools, or other recipients of service that do not fall within the scope of an established psychologist-client relationship (NASP-PPE Definition of Terms).** This distinction is particularly important for school practitioners because, in law and ethics, the rules for informed consent are linked to whether services are provided within the context of a school psychologist–client relationship.

Eight-Step Problem-Solving Model

- 1. Describe the parameters of the situation.**
- 2. Define the potential ethical-legal issues involved.**
- 3. Consult ethical-legal guidelines, if any, already available that might apply to the resolution of each issue. Consider the broad ethical principles as well as specific mandates involved. Consider cultural characteristics salient to decision.**
- 4. Evaluate the rights, responsibilities, and welfare of all affected parties.**

Eight-Step Problem-Solving Model

- 5. Generate a list of alternative decisions possible for each issue.**
- 6. Enumerate the consequences of making each decision. Consultation with colleagues may be helpful.**
- 7. Present any evidence that the various consequences or benefits resulting from each decision will actually occur (i.e., a risk-benefit analysis).**
- 8. Make the decision. Consistent with ethical codes, school psychologists accept responsibility for the decision made and monitor the consequences of the course of action chosen. (Adapted from Koocher & Keith-Spiegel, 2008).**

I. Respecting the Dignity and Rights of All Persons

Principle I.1 Autonomy and Self Determination (Consent and Assent)

Principle I.2 Privacy and Confidentiality

Principle I.3 Fairness and Justice

Vignette #1

Hannah Cook, school psychologist, is employed by a school district that uses the Dynamic Indicators of Basic Early Literacy Skills for Tier 1 progress monitoring. All of the first grade students receive periodic benchmark assessments; those who are struggling with early literacy skills receive weekly progress monitoring. Mrs. Cook is part of the team that does the weekly monitoring. A parent (a clinical psychologist in private practice) has objected to Mrs. Cook's involvement in the progress monitoring. The parent told the principal that a school must have her written consent before a school psychologist "observes or tests" her child. The parent has said that she wouldn't object to the other team members doing the assessment—just Mrs. Cook because of Mrs. Cook's training as a psychologist. What are the ethical-legal issues associated with this situation?

Ethics Code: Services Outside the Scope of an Established School Psychologist-Client Relationship

Standard I.1.1: “School psychologists encourage and promote parental participation in school decisions affecting their children (see Standard II.3.10). **However, where school psychologists are members of the school’s educational support staff, not all of their services require informed parent consent. It is ethically permissible to provide school-based consultation services regarding a child or adolescent to a student assistance team or teacher without informed parent consent as long as the resulting interventions are under the authority of the teacher and within the scope of typical classroom interventions.”**

Ethics Code footnote

Recommends that a school district's parent handbook informs families that school psychologists routinely assist teachers in planning classroom instruction and monitoring its effectiveness, and that district policy does not require parent notice or consent for such involvement in student support (NASP-PPE, footnote to I.1.2).

Legal Issues: IDEA

- “The screening of a student by a teacher **or specialist** to determine appropriate instructional strategies for curriculum implementation is not considered to be an evaluation requiring parental consent under IDEA” (34 C.F.R. § 300.302).
- The question of **who is considered a “specialist”** is left to the discretion of the school district. (*Federal Register, Analysis of Comments and Changes, August 14, 2006, p. 46639*).

The U.S. Department of Education's Office of Special Education Programs (OSEP) and the courts have generally supported the use of "less drastic alternatives" such as RTI prior to evaluation of a student for eligibility under IDEA or Section 504 as long as the student's progress is monitored and a referral for evaluation is made as soon as a disability is suspected (e.g., *A.P. v. Woodstock Board of Education*, 2008; *El Paso Independent School District v. Richard R.*, 2008; also Musgrove, 2011).

- Under IDEA, parents must be *notified* if RTI is being implemented ***as part of the process to determine whether their child is suspected of having a disability.*** More specifically, the parents should be notified about:
 - the amount and nature of student performance data to be collected,
 - the general education services that will be provided,
 - strategies that will be implemented for increasing the child's rate of learning
 - and the parents' right to request an evaluation of their child for IDEA eligibility at any time (34 C.F.R. § 300.311[a][7]).

Furthermore, **if parents request a special education or 504 eligibility evaluation *during* the RTI process and the school decides not to evaluate the student,** the school must provide parents with written notice of its refusal to evaluate along with information describing parent rights to challenge that decision (Musgrove, 2011).

School districts may not require that RTI be implemented for a predetermined number of weeks before responding to a parent request for an evaluation under IDEA or Section 504 (Musgrove, 2011).

If, at any point during the process of providing early intervening services, a student is suspected of having a disability, then the school is required to seek parent consent to conduct an individual evaluation in accordance with IDEA or Section 504 procedures and time lines (Musgrove, 2011). Because RTI is a widely accepted evidence-based general education instructional method and because schools, not parents, have the authority to select specific instructional methodologies (e.g., *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 1982; *Ridley School District v. M.R.*, 2012), **the school (not parent) determines which students receive RTI services, the instructional strategies implemented for each child, and how student progress is monitored.**

Other Ethical Standards Pertaining to Parent Consent

Standard I.1.1.... “Parent consent is required if the consultation about a particular child or adolescent is likely to be extensive and ongoing and/or if school actions may result in a significant intrusion on student or family privacy beyond what might be expected in the course of ordinary school activities” (I.1.1.)

Mental Health Screenings

- Standard I.1.1. ...Parents must be notified prior to the administration of questionnaires to screen for mental health problems and must given the opportunity to remove their child or adolescent from participation in such screenings.
- Comment: if the teacher is doing the screening and reporting on "public" or visible student behavior, then neither parent notice or consent would be required. Notice would be polite but not required under federal law (as long as its not part of an IDEA/504 assessment).

Minors and Consent

- Minors Who Self-Refer
- Minors Who Seek Treatment Independent of Parent Notice or Consent

Ethics: Minors and Consent

**Standard I.1.2. “When a student who is a minor self-refers for assistance, it is ethically permissible to provide psychological assistance without parent notice or consent for one or several meetings to establish the nature and degree of the need for services and assure the child is safe and not in danger.
...”**

Ethics Code Footnote

“It is recommended that school district parent handbooks and websites advise parents that a minor student may be seen by school health or mental health professionals (e.g., school nurse, counselor, social worker, school psychologist) without parent notice or consent to ensure that the student is safe or is not a danger to others.”

Ethics: Minors and Consent

Standard I.1.2. . . . “However, if the student is not old enough to receive school psychological assistance independent of parent consent, the school psychologist obtains parent consent to provide continuing assistance to the student beyond the preliminary meetings **or refers the student to alternative sources of assistance that do not require parent notice or consent.**”

Oklahoma – Minor’s Consent to Outpatient Mental Health Services

- 63 Okl. St. § 2602
- Oklahoma law allows for emergency mental health services if a parent cannot be contacted, **but do not have laws explicitly allowing minors to consent to outpatient treatments.**
- Oklahoma requires that parents are informed when emergency mental health services are provided to minors without parental consent

I. Respecting the Dignity and Rights of All Persons

Principle I.1 Autonomy and Self
Determination (Consent and Assent)

Principle I.2 Privacy and Confidentiality

Principle I.3 Fairness and Justice

Vignette #2

Leslie is a 14-year old girl who has a history of suicide attempts and psychiatric hospitalization. Maria Delgado, school psychologist, provides individual counseling to Leslie once a week as part of a Section 504 plan to monitor Leslie's emotional well-being and assist her in self-understanding and developing healthy social relationships. During the first four weeks of counseling sessions, Leslie talked incessantly about her romantic interest in a boy named "Ethan" who is in one of her classes. She repeatedly attempted to interact with him in socially appropriate ways but he has shown little interest in developing a friendship with her. In their fifth counseling session, Leslie discloses that, after getting his cell phone number from a classmate, she sexted Ethan several nude pictures of herself because the pictures "will get him interested in me." Using her cell phone, Leslie shows Maria one of the pictures she sexted to Ethan.

Vignette #2 Cont.

Maria is aware that Leslie and Ethan are now at risk for being criminally prosecuted under state law that prohibits distribution and possession of child pornography. She is also aware that her school district's policy states that school personnel who discover images of nude or partially nude minors on a student's electronic device should promptly and directly contact law enforcement. However, Maria did not forewarn Leslie or her parents that disclosure of a criminal act might result in a breach of confidentiality. What are the ethical and legal issues associated with this situation? How should Maria handle this situation? (Adapted from Jacob, Decker, & Lugg, in preparation.)

Ethical Issues

- Confidentiality
- Privilege
- Record Keeping
- Welfare of Students

Confidentiality

Standard I.2.3. School psychologists inform students and other clients of the boundaries of confidentiality at the outset of establishing a professional relationship. They seek a shared understanding with clients regarding the types of information that will and will not be shared with third parties. However, if a child or adolescent is in immediate need of assistance, it is permissible to delay the discussion of confidentiality until the immediate crisis is resolved. School psychologists recognize that it may be necessary to discuss confidentiality at multiple points in a professional relationship to ensure client understanding and agreement regarding how sensitive disclosures will be handled.

Boundaries of Confidentiality

- **YOU** set the boundaries of confidentiality.
- **NEVER** promise absolute confidentiality.
- **DUTY TO PROTECT: Standard is reasonably foreseeable risk of harm** rather than imminent danger
 - Risk of self-harm?
 - Poses a danger to others?
 - Child neglect or abuse?
 - Also consider whether you want to forewarn students that you may not be able to keep quiet if you learn they committed a crime.

Privilege as an Ethical Issue

Standard 1.2.2: “School psychologists minimize intrusions on privacy. They do not seek or store private information about clients that is not needed in the provision of services. School psychologists recognize that client–school psychologist communications are privileged in most jurisdictions and do not disclose information that would put the student or family at legal, social, or other risk if shared with third parties, except as permitted by the **mental health provider–client privilege laws in their state.**”*

Privilege as Legal Issue

- Privilege refers to the legal right of the *client* (parent of a minor child) to prevent disclosure of information revealed in the psychologist-client relationship to others.
- Privilege applies only to communications that occur in the context of the practitioner-client professional relationship.
- Privilege laws cover communications of the client, and family members who are participating in the diagnosis and treatment of the client, where such persons have an expectation of confidentiality.

OK Nondisclosure Law

12 Okl. St. § 1376

“All communications between a licensed psychologist and the individual with whom the psychologist engages in the practice of psychology are confidential.”

Note: “*Psychologist* means a person who represents himself or herself to be a psychologist by using any title or description of services incorporating the words “psychology,” “psychological,” or “psychologist,” or by offering to the public or rendering to individuals or to groups of individuals services defined as the practice of psychology.”

OK Evidentiary Privileged Communication Law

12 Okl. St. § 2503

“Psychotherapist” privilege: A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment of the patient's physical, mental or emotional condition, including alcohol or drug addiction, among the patient, the patient's physician or psychotherapist, and persons who are participating in the diagnosis or treatment under the direction of the physician or psychotherapist, including members of the patient's family.

Note: “Psychotherapist” defined as a person licensed or certified as a psychologist under the laws of any state or nation, or reasonably believed by the patient to be so licensed or certified, while similarly engaged

Comments on Privilege

- **Typical Exceptions to Privilege:**
 - State-mandated reporting, such as child neglect or abuse.
 - Intent to self-harm or harm others.
- **State variations**
 - Terrorism
 - Homicide

Privacy and Privilege

- Ensure that privileged school psychologist-client communications are kept strictly confidential (in sole possession records) and not disclosed to anyone without appropriate consent.**
- Information placed in a student's education record is no longer privileged if it is disclosed or available to others.**

Need to Know Rule

Standard I.2.5. School psychologists discuss and/or release confidential information only for professional purposes and only with persons who have a legitimate need to know. They do so within the strict boundaries of relevant privacy statutes.

Actions - Reactive

- Discuss why confidentiality must be broken
- Encourage Leslie to take responsibility for her actions while at the same time providing emotional support
- Parent contact and involvement

Actions - Proactive

- Discuss boundaries of confidentiality each time school psychologist-client relationship is established and re-visit as appropriate.
- Ensure that school district policies about reporting problematic student behaviors are not in conflict with mental health provider confidentiality requirements.

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Vignette #3

Susan Doe was born male but began to express a female gender identity by age two. In grades K-3 she wore gender-neutral clothes. In third grade, she was referred to as “she” and by grade 4 she dressed exclusively as a girl. When Susan was in fourth grade, a Section 504 plan was developed for her. The ADAA/Section 504 excludes gender identity disorder and transgender status from its definition of a disability. However, Susan was diagnosed with a gender identity disorder and concomitant emotional and social stresses that impaired her ability to join in and benefit from school life. As a result, school professionals, long with Susan’s parents, felt that accommodations were necessary at school to support Susan’s mental health and address the impact of gender identity issues on her school experiences. The 504 plan included encouraging students and staff to refer to Susan by her female name and allowing Susan to use the communal girl’s bathroom.

Vignette #3 (Cont.)

The plan was initially implemented smoothly and without complications until a boy, encouraged by his grandfather, entered the girl's bathroom, claiming that he too had a right to be there. This incident triggered media coverage and controversy. As a result, school administrators decided that Susan would not be permitted to use the girls bathroom. She was instructed to use the staff unisex bathroom and was the only student permitted and required to do so. Susan's parents filed a complaint in state court asserting unlawful discrimination based on the state's human rights law that prohibits discrimination against transgender persons in public facilities.

Vignette #3 (Cont.)

In the court opinion, Judge Silver wrote “Susan is a girl” and must be given the same access to the girls bathroom as other girls (*John Doe v. Regional School Unit 26*, 2014, p. 16). The court held that “Where it had been clearly established that a student’s psychological well-being and educational success depended on being permitted to use the communal bathroom consistent with her gender identity, denying access to the appropriate bathroom” was discriminatory under state law (p. 1). NOTE: This case is not a legal precedent in Oklahoma. (Adapted from *John Doe v. Regional School Unit 26*, 2014.)

Vignette #3 (Cont.)

Discuss the ethical issues associated with this situation. Do you agree with the court's decision allowing a male-to-female transgender student to use the girl's bathroom? Do you think that requiring Susan to be the only student to use the staff unisex bathroom would have been a better way to resolve the situation? Why or why not? The principal of Susan's school testified that it wasn't "safe" for Susan to use the boy's bathroom. Do you agree and why? As a systems-level consultant, what steps would you recommend to foster a school climate that is safe and welcoming for transgender students? (Adapted from Jacob, Decker, & Lugg, in preparation.)

Ethical Issues

Principle 1.3. Fairness and Justice : “In their words and actions, school psychologists promote fairness and justice. They use their expertise to cultivate school climates that are safe and welcoming to all persons regardless of actual or perceived characteristics, including . . . sexual orientation, gender identity, gender expression, disability, or any other distinguishing characteristics.”

Ethics: Greater Emphasis on Promoting Healthy Environments

Standard IV.1.2: “School psychologists use their professional expertise to promote changes in schools and community service systems that will benefit children and other clients. They advocate for school policies and practices that are in the best interests of children and that respect and protect the legal rights of students and parents.”

Legal Issues

- **Case law** related to discrimination against and harassment of LGBT school students.
- **Federal statutory law:** Title IX of the Education Amendments of 1972 and the U.S. Department of Education's 2010 interpretation of Title IX that requires schools receiving federal funds to take steps to prevent bullying of students on the basis of sex, including harassment based on a student's nonconformity to gender role expectations.

14th Amendment

- The 14th amendment has been the basis for lawsuits against school districts involving discrimination against LGBT students and for failure to provide equal protection from harassment for LGBT youth when compared to non-LGBT classmates.
- *Nabozny v. Podlesny* (1996) provides an example of violation of a student's 14th Amendment *right to equal protection from harassment* because the school failed to protect an openly gay student from harassment to the same extent it protected other students.

Title IX of the Educational Amendments of 1972

- Title IX allows schools to receive federal funds on the condition the school protects its students from discriminatory practices based on sex. It is administered by the U.S. Department of Education's (DOE) Office for Civil Rights (OCR).
- Title IX confers a right of private action, that is, students who are victims of sexual harassment may seek to hold school officials or the district liable for monetary damages through lawsuits under Section 1983 or state law

Two Legal Standards: OCR v. Courts

- The U.S. DOE Office for Civil Rights (OCR) has the power to “promulgate and enforce requirements that effectuate [Title IX’s] nondiscrimination mandate” (*Gebser*, p. 292) that extend beyond events and circumstances that would give rise to a claim for money damages (OCR, 2001, p. ii; *Gebser*, p. 292).
- *The OCR thus has the authority to craft detailed regulations for compliance with Title IX and reduce the flow of federal dollars to schools that refuse to comply.*
- *The courts, however, determine the legal tests that must be met before a school official or district school can be held liable for monetary damages in a Title IX lawsuit filed by a victim of sexual harassment under Section 1983 or state law.*

Davis Title IX

- In *Davis*, the Court stated that “damages are not available for simple acts of teasing and name-calling among school children” but rather for behavior “**so severe, pervasive, and objectively offensive**” (p. 1675) that it denies its victims the equal access to education as guaranteed under Title IX.
- It went on to state that the *school officials must have known of the harassment and, acting with “deliberate indifference,” failed to take reasonable steps to stop it.*

OCR's 2010 Dear Colleague Letter

- The OCR now explicitly interprets Title IX as protecting *all* students from gender-based harassment.
 - Schools are responsible for taking reasonable steps to remedy student-on-student harassment based on gender when it is sufficiently severe, pervasive, *or* persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the district's programs or activities.

OCR

- Schools must take steps to protect students from harassment based on nonconformity to gender-role stereotypes. In *Zeno v. Pine Plains Central School District* (2012), a federal court ruled that simply disciplining the harassers is not enough.
- If harassment based on gender or nonconformity to gender-role stereotypes results in a *hostile learning environment* for a student, schools “have an obligation to take immediate and effective action to eliminate the hostile environment” (p. 8).

OCR

- The OCR's 2001 *Revised Sexual Harassment Guidelines* provide a blueprint for developing district policies to eliminate student-on-student sexual harassment and create a school climate that is welcoming to all individuals.
- *Encourages proactive, system-wide approach* to create safe schools for LGBT youth.

Actions - Proactive

Staff training on LGBT youth issues and anti-bullying interventions. Training should include a foundational knowledge component (e.g., the science of sexual orientation, legal rights of LGBT students), and instruction and supervision in role-specific knowledge and skills (e.g., best practices in teaching about LGBT issues, effective strategies to prevent and respond to bullying, knowledge of best practices in counseling students who are struggling with questions related to their sexual orientation or gender identity).

Actions - Proactive

Provide opportunities for parents to learn about the special challenges that face LGBT youth and gay-parented families at school and in the community, and to become knowledgeable of the school district's policies prohibiting discrimination and harassment on the basis of sexual orientation and gender expression

Actions - Proactive

- School-wide policies and practices to reduce bullying of LGBT youth
- Take steps to foster an environment in which it is no longer “taboo” to learn about and discuss LGBT issues in informal classroom discussions and as part of the district-approved curriculum. The federal courts have typically allowed school districts much discretion with regard to curricular content (e.g., *Parker v. Hurley, 2008*)

II. Professional Competence and Responsibility

Principle II.1 Competence

Principle II.2 Accepting Responsibility for
Actions

Principle II.3 Responsible Assessment and
Intervention Practices

**Principle II.4 Responsible School-based Record
Keeping**

Principle II.5 Responsible Use of Materials

Vignette #4

Wanda Rose is a school psychologist in a rural area. She has always assumed that if she retained student psychological test protocols, they were solely for her own use. Since she writes notes to herself regarding the student's behavior, affect and approach to testing, and personal comments about the testing session, she considers the protocols to be “sole possession records” as defined by the Family Educational Rights and Privacy Act of 1974 (FERPA). After completing her psychoeducational assessment reports, she shreds the test protocols. What are the ethical and legal issues associated with this situation? (Adapted from Armistead, Williams, & Jacob, 2011).

Ethical Issues

Standard II.4.4. School psychologists ensure that parents have appropriate access to the psychological and educational records of their child.

- **Parents have a right to access any and all information that is used to make educational decisions about their child.**
- **School psychologists respect the right of parents to inspect their child's answers to school psychological test questions even if those answers are recorded on a test protocol (also see II.5.1).***

Legal Issues

- In the Analysis of Comments and Changes section of the 1999 IDEA regulations (*Federal Register*, March 12, 1999, p. 12641) and in more recent responses to letters of inquiry (Guard, 2007; Rooker, 2008), the DOE again reiterated its long-standing policy that the form on which an individual student's answers are recorded is an education record as defined by FERPA.
- Parents have a legal right to inspect and review their child's responses recorded on a school psychological test protocol. **Protocols cannot be considered private notes.** (Also see *John K. and Mary K. v. Board of Education for School District #65, Cook County, 1987*; *Newport-Mesa Unified School District v. State of California Department of Education, 2005*).

Legal Issues

Schools are cautioned against destroying protocols from individually administered psychological or educational tests if such actions could deny parents their legal right to access to information used in educational decision making about their child.

The IDEA requires that the information obtained from evaluation sources is documented (34 C.F. R. § 300.306 [c][ii]). In McKinney Independent School District Texas State Educational Agency (2010), a special education hearing officer required a school district to pay for an independent educational evaluation of a child because the district did not have the test protocols from its own evaluation of the child. In *Woods v. Northport Public Schools* (2012), the school's failure to provide a child's test protocols to a licensed psychologist as requested by the parents was determined to an IDEA violation.

Parent Request for a Copy of their Child's Test Protocol

A school is not legally required to provide copies of a child's test protocols to parents except when circumstances "effectively prevent the parent from exercising the right to inspect and review the student's education records. In such situations, the school must provide the parent a copy of the records requested, or make other arrangements for them to inspect and review the requested records (34 C.F.R. § 99.10)."

Copies of Test Protocols

- **Inspect vs. copying protocols: case law decision in *Newport-Mesa Unified School District v. State of California Department of Education* (2005)**
- **Case ruled that providing parents a copy of a child's completed test protocol is permissible within "fair use" provision of federal copyright protection.**
- **Court suggested parents be asked to sign a nondisclosure agreement prior to providing them a copy of a protocol.**
- **Court did not rule on intellectual property rights of test publisher.**