CHAPTER 7

SCHOOL PSYCHOLOGY

Susan Jacob and Megan M. Kleinheksel

School psychologists are professionals who provide educational and mental health services to children and youth, as well as work with parents, educators, and other professionals, to help youth succeed academically, socially, behaviorally, and emotionally, and who work to foster supportive learning environments for all schoolchildren (National Association of School Psychologists [NASP], 2010, Introduction). As of 2008, there were approximately 35,400 credentialed school psychologists in the United States (Charvat, 2008). Most are employed by the public schools (about 80%), but some work in private schools, mental health agencies, correctional facilities, hospitals, private practice, or other settings. The majority of school-based practitioners were trained at the specialist-degree level; about 24% hold a doctoral degree (Curtis et al., 2008).

This chapter addresses professional ethics in the field of school psychology, with a focus on the special challenges associated with school-based practice. We first discuss codes of ethics that provide guidance to school psychologists. Because public education is highly regulated by law, we next summarize the legal underpinnings of school-based practice and the ethical–legal issues associated with consent, confidentiality, privilege, record keeping, and assessment and intervention in the schools. Examples of ethically challenging situations experienced by school-based practitioners are then discussed. Throughout the chapter, differences between school-based practice and the delivery of psychological services in nonschool settings (e.g., private practice) are noted, with the goal of promoting positive collaboration between school- and community-based mental health providers.

CODES OF ETHICS

Two professional associations, the American Psychological Association (APA) and the NASP, have shaped the development of the field of school psychology. The *Ethical Principles of Psychologists and Code of Conduct* (the Ethics Code; APA, 2010) was developed for psychologists with training in diverse specialty areas. In contrast, NASP's *Principles for Professional Ethics* (the NASP-PPE; NASP, 2010) was developed specifically to address ethical issues associated with the provision of school psychological services.

Because our focus is on school-based practice, greater attention is given in this chapter to the standards outlined in NASP's code of ethics than APA's code. *School-based practice* is defined as "the provision of school psychological services under the authority of a state, regional, or local educational agency" whether the school psychologist "is an employee of the schools or contracted by the schools on a per-case or consultative basis" (NASP, 2010, Definitions). However, school psychologists should be thoroughly familiar with the NASP-PPE and the Ethics Code, whether or not they are members of a professional association. A psychologist with a broad knowledge base of ethical principles and standards may be able to anticipate and prevent ethical

The authors are not attorneys, and the information provided should not be construed as legal advice.

DOI: 10.1037/13272-007
APA Handbook of Ethics in Psychology: Vol. 2. Practice, Teaching, and Research, S. J. Knapp (Editor-in-Chief)

dilemmas from occurring and is better prepared to make sound choices when challenging situations arise. In addition, regardless of association membership or level of training, trainees and practitioners may be expected to know and abide by both the Ethics Code and NASP-PPE in their work setting (Flanagan, Miller, & Jacob, 2005). Finally, state licensing boards may require adherence to a professional code of ethics as part of their regulatory standards, and in those states, ethics code violations can result in denial or loss of practice credentials (Koocher & Keith-Spiegel, 2008). School psychologists also face possible denial or loss of the National Certificate in School Psychology for violations of the NASP-PPE (NASP, 2007).

NASP-PPE was first adopted in 1974 and revised in 1984, 1992, 1997, 2000, and 2010 (see Williams, Armistead, & Jacob, 2008, for a history of the code). The NASP-PPE emphasizes protecting the rights and interests of schoolchildren. The code is organized around four broad aspirational themes: "Respecting the Dignity and Rights of All Persons"; "Professional Competence and Responsibility"; "Honesty and Integrity in Professional Relationships"; and "Responsibility to Schools, Families, Communities, the Profession, and Society." These themes were derived from the literature on ethical principles (e.g., Bersoff & Koeppl, 1993; Prilleltensky, 1997; Ross, 1930) and other codes of ethics, especially that of the Canadian Psychological Association (CPA, 2000). The four broad themes subsume 17 ethical principles, and each principle is then further articulated by specific standards of conduct. The "broad themes, corollary principles, and ethical standards are to be considered in ethical decision making" (NASP, 2010, Introduction). However, the broad theme statements are aspirational; NASP will seek to enforce only the 17 ethical principles and associated standards of conduct (NASP, 2010, Introduction).

FOUR BROAD ASPIRATIONAL THEMES

School psychologists "are committed to the application of their professional expertise for the purpose of promoting improvement in the quality of life for students, families, and the school community" (NASP, 2010, Introduction) and they pursue this objective only in ways that protect the dignity and rights of all persons (NASP, 2010, Introduction; also APA, 2010, General Principle A). The interests and rights of children and youth are considered to be the highest priority in decision making (NASP, 2010, Introduction).

Respecting the Dignity and Rights of All Persons

NASP's first broad theme states, "In their words and actions, school psychologists demonstrate respect for the autonomy of persons and their right to self-determination, respect for privacy, and a commitment to just and fair treatment of all persons." Under this theme, NASP's code has specific principles and standards for respecting autonomy and self-determination (consent and assent; NASP, 2010, I.1), privacy and confidentiality (NASP, 2010, I.2), and fairness and justice (NASP, 2010, I.3). This portion of the code also addresses several emerging ethical issues, such as providing consultative services in the classroom (not within the context of a psychologist–client relationship), respecting privacy rights with regard to sensitive student health information and sexual orientation and transgender status, and providing effective services for all persons regardless of their cultural and experiential background and individual characteristics.

Professional Responsibility and Competence

Beneficence, or responsible caring, means that psychologists engage in actions that are likely to benefit others, or at least will do no harm (CPA, 2000; Kitchener, 2000; also see APA, 2010, General Principle A; NASP, 2010, II). According to the NASP, "to do this, school psychologists must practice within the boundaries of their competence, use scientific knowledge from psychology and education to help clients and others make informed choices, and accept responsibility for their work" (NASP, 2010, II). Under the second aspirational theme, NASP's code has specific principles and standards pertaining to professional competence and maintaining competence (NASP, 2010, II.1) and accepting responsibility for actions (NASP, 2010, II.2), including the obligation to monitor the effectiveness of services

provided and to take steps to correct any ineffective recommendations. Responsible assessment and intervention practices (NASP, 2010, II.3), school-based record keeping (NASP, 2010, II.4), and ensuring the proper use of assessment and intervention materials (NASP, 2010, II.5) also are addressed under the second broad theme.

Honesty and Integrity in Professional Relationships

A psychologist–client relationship is a *fiduciary* relationship, that is, one based on trust. The third broad theme in NASP's code states,

> To foster and maintain trust, school psychologists must be faithful to the truth and adhere to their professional promises. They are forthright about their qualifications, competencies, and roles; work in full cooperation with other professional disciplines to meet the needs of students and families; and avoid multiple relationships that diminish their professional effectiveness. (NASP, 2010, II)

Four enforceable principles (NASP, 2010, III.1–III.4) are nested under the third broad theme, along with specific standards that clarify how the four principles apply to professional practices.

Responsibility to Schools, Families, Communities, the Profession, and Society

School psychologists have a responsibility to foster the well-being of individual students, but also to use their professional knowledge to help create healthy, safe, and caring environments for children and families (Prilleltensky, 1991; also see CPA, 2000; APA, 2010, General Principle B). NASP's fourth broad theme (NASP, 2010, IV) includes principles and standards for promoting healthy school, family, and community environments (NASP, 2010, IV.1); respecting law and the relationship of law and ethics (NASP, 2010, IV.2); maintaining public trust by self-monitoring and peer monitoring (NASP, 2010, IV.3); advancing the profession by mentoring, teaching, and supervision (NASP, 2010, IV.4); and contributing to the school psychology knowledge base (NASP, 2010, IV.5; also see Jacob, Decker, & Hartshorne, 2011).

LEGAL REGULATION OF SCHOOL-BASED PRACTICE

For school-based practitioners, knowledge of school law pertinent to the provision of school psychological services "is one way to enhance opportunities for implementing best professional practices" (Reschly & Bersoff, 1999, p. 1077; also see Case Examples 1 and 2). For psychologists employed in nonschool settings, understanding the legal regulation of school-based practice hopefully can improve communication and collaboration between school- and community-based practitioners (see Table 7.1).

The 10th Amendment of the U.S. Constitution is interpreted as prohibiting Congress from establishing a nationalized education system. State governments have assumed the duty to educate children and the power to do so (Hubsch, 1989). The primary mission of public schools is to educate children, maintain order, and ensure pupil safety (*Burnside v. Byars*, 1966; NASP, 2010, Introduction). The authority to educate children and ensure pupil safety is further delegated by state governments to local school boards. When school psychologists employed by a school board make decisions in their official roles, such acts are seen as an extension of the authority of state government; in legal parlance, school-based practitioners are considered to be *state actors*. As state actors, school-based practitioners must know and respect the legal rights of schoolchildren and their parents. Furthermore, as employees of a school board, school-based practitioners have a legal obligation to protect all students from reasonably foreseeable risk of harm (Russo, 2006).

U.S. Constitution

The three basic sources of public school law are the U.S. Constitution, statutes and regulations, and case law (Russo, 2006). No fundamental right to an education is guaranteed to citizens in the U.S. Constitution (*San Antonio Independent School District v. Rodriguez*, 1973). However, state public education laws and school district policies are subject to the provisions of the Constitution. For this reason, the Constitution has been the foundation for many decisions affecting education, including the right to equal educational opportunity for all children and

TABLE 7.1

Improving Communication and Collaboration Between School-Based School Psychologists and Nonschool Mental Health Professionals

School-based practice of school psychology	Practice in community-based mental health care settings
Primary mission of schools is to educate students.	Primary mission is improved mental health.
FERPA safeguards the privacy of elementary and secondary student education records, including school psychological records, and ensures parent access to the education records of their own child. Student education records are accessible to school staff with "legitimate educational interest" in the child and are not privileged. Confidential communications within the context of a school psychologist–client established relationship may or may not be privileged under state law.	HIPAA protects the privacy of patient health and mental health records and includes rules addressing electronic storage and transmission of private health information. Communications within an established professional relationship between a licensed doctoral-level psychologist and client are privileged under state laws. Unlike FERPA, HIPAA requires training of staff members who manage protected health information.
School-based psychologists conduct psychoeducational evaluations to assist in determining whether a student has a disability as defined by IDEA or Section 504/ADAA. A student's eligibility, disability classification under IDEA, and educational interventions are determined by a team of persons that includes the parents.	Community-based psychologists typically assess and diagnose youth using the *DSM–IV–TR* and may render a diagnosis based solely on their own assessment findings.
To be eligible for special education and related services under IDEA Part B, a student must have a disability as defined in 1 of 13 categories *and* he or she must need special education and related services because of that disability.	Under federal law, a *DSM–IV–TR* diagnosis is neither necessary nor sufficient to determine eligibility under IDEA.
The IDEA Part B definition of emotional disturbance focuses on overt and observable characteristics, resulting in a need for data based on classroom observations and behavior rating scales or checklists.	Findings from projective techniques may support a diagnosis rendered by a psychologist or psychiatrist. However, projective test results alone do not provide sufficient documentation of student eligibility for special education under the IDEA Part B definition of emotional disturbance.
A public school may not label a child as "emotionally disturbed" without some sort of fair decision-making procedure that includes parent notice of the proposed classification and the right to challenge the classification.	Psychologists in private practice may render a diagnosis of a child as having a mental disorder without providing his or her parents prior notice of the proposed diagnosis and a right to challenge the diagnosis.
To receive IDEA funds, states must prohibit school personnel from requiring parents to obtain a prescription for a controlled substance as a condition of attending school (34 C.F.R. 300.174). For this reason, some school districts prohibit employees from suggesting psychopharmacological treatment of a student to a parent.	Psychologists in community-based practice are not restricted from recommending psychopharmacological treatment of a child to the parent.
As school employees, school-based practitioners have a duty to protect *all* students from reasonably foreseeable risk of harm to self or others. Schools must contact parents if it is suspected that a student is suicidal and adhere to district protocols for determining whether a student poses a threat to others.	Community-based mental health providers likely have more professional discretion in duty to protect situations. Some, but not all, states have enacted laws requiring psychologists to make reasonable efforts to warn potential victims of violent crimes.
Under FERPA, parents have access to the school psychological education records of their own high school student after he or she reaches the age of majority as long as the student is a dependent as defined by tax laws. For this reason, school-based practitioners may need to refer students seeking treatment on their own (without parent consent) to community-based sources of assistance.	Depending on the state where they practice, community-based health and mental health providers may be permitted to treat minors for certain conditions independent of parent notice or consent, with the minor's treatment records considered to be privileged and under his or her own control.

TABLE 7.1 (*Continued*)

Improving Communication and Collaboration Between School-Based School Psychologists and Nonschool Mental Health Professionals

School-based practice of school psychology	Practice in community-based mental health care settings
Because they are employed under the authority of the state's department of education, school-based practitioners usually are credentialed by the state's department of education. Certification or licensure requirements typically include supervised experience in a school setting.	Community-based mental health providers are usually credentialed by a state licensing board. Licensure requirements typically include supervised experience in a health or mental health care setting.
Depending on the state where he or she is employed, school-based practitioners may be immune from civil liability under state law during the performance of their duties within the scope of their employment. Malpractice suits against school-based psychologists are rare. However, they often are required to defend their assessment and intervention practices in administrative hearings under IDEA or Section 504.	Under state statutory or common law, professional malpractice suits may be filed by clients against private practitioners.

Note. FERPA = Family Education and Rehabilitation Act of 1974; HIPAA = Health Insurance Portability and Accountability Act of 1996; *DSM–IV–TR* = *Diagnostic and Statistical Manual of Mental Disorders* (4th ed., text revision); IDEA = Individuals With Disabilities Education Improvement Act of 2004; Section 504/ADAA = Section 504 of the Rehabilitation Act of 1973/Americans With Disabilities Act Amendments (2008).

student rights in the school setting (e.g., freedom of speech, privacy rights).

The equal protection clause of the 14th Amendment provides that no state shall "deny any person within its jurisdiction the equal protection of the laws." Beginning in the 1950s, this clause has been interpreted to mean that a state may not make a free public education available to some children but not to others in the state, and that state governments must provide equal educational opportunity to all schoolchildren within its jurisdiction regardless of race, color, national origin, gender, or disability (e.g., *Brown v. Board of Education*, 1954; *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania,* 1971, 1972).

The 14th Amendment also provides that no state shall "deprive any person of life, liberty, or property, without due process of law." *Substantive* due process applies to the content of a law. In the public schools, substantive due process has been interpreted to mean that school rules restricting student constitutional freedoms must be reasonably related to the purpose of schools (e.g., *Tinker v. Des Moines Independent Community School District*, 1969). *Procedural* due process means that a state may not take away life, a liberty interest, or a property right without some sort of procedural fairness to safeguard citizens from unfair or wrongful infringement of rights by the government (Reschly & Bersoff, 1999). In *Goss v. Lopez* (1975), the Supreme Court held that education is a *property right* protected by the 14th Amendment, and that schools may not suspend or expel children from school (and therefore deprive them of their property interest) without some sort of fair, impartial due process procedures that include notice and the opportunity to be heard. The due process clause also protects citizens from unwarranted stigmatization by the state that could interfere with the ability to acquire property (*Wisconsin v. Constantineau*, 1971). A public school may not label a child as "emotionally disturbed" or "mentally retarded" without due process, that is, some sort of fair decision-making procedure that includes parent notice of the proposed classification and the right to challenge the classification.

Federal Statutory Law

Because education is a duty left to state governments, most public school laws are enacted at the state level. However, the U.S. Congress has the power to shape

education policy and practices by offering monies to states contingent on compliance with federal law. Some federal education legislation is grant legislation; that is, funds are provided to states on the condition that schools comply with certain education policies. The Individuals With Disabilities Education Improvement Act of 2004 (IDEA, 2004) is an important example of this type of legislation. Other federal education legislation stipulates that no federal funds will be made available to schools unless they adhere to specific policies outlined in the law. The Family Educational Rights and Privacy Act of 1974 (FERPA, 1974) is an example of this type of legislation. Congress also has enacted civil rights legislation that prohibits state and school authorities from discriminating against individuals on the basis of race, color, or national origin; gender; or disability in any program or activity receiving any federal funding. These laws also protect students from harassment on the basis of those characteristics. Schools must comply with antidiscrimination legislation if they receive any federal funds for any purpose. Section 504 of the Rehabilitation Act of 1973 (Section 504) is an example of antidiscrimination legislation.

School-based practitioners also must be familiar with Section 1983 of the Civil Rights Act of 1871. Under Section 1983, any person whose constitutional rights (or rights under federal law) have been violated by a government officials (including state actors, such as public school principals and school psychologists), may be held personally liable for damages in federal court.

INFORMED CONSENT, CONFIDENTIALITY, PRIVILEGE, AND RECORD KEEPING

Ethical issues pertaining to a school psychologist's many roles include respecting and safeguarding privacy rights, ensuring that students and others with whom they work have a voice in decisions that affect them, and engaging in responsible record keeping.

Informed Consent

Codes of ethics and law show agreement that, with the exception of urgent situations, informed consent should be obtained to establish a school psychologist–client professional relationship. In the school setting, consent to establish a professional relationship typically is sought from the parent[1] or guardian of a minor child or from the student if an adult. Like nonschool practice settings, the individual providing consent must be given sufficient information to make an informed choice about whether to accept the services offered, consent must be voluntary, and the parent must be allowed to withdraw consent at any time without negative repercussions. Also, practitioners recognize that consent is an ongoing process, requiring additional discussion with the individual who provided consent if there is a significant change in the previously agreed on assessment or intervention goals or procedures (APA, 2010, General Principle E; Standard 3.10, Informed Consent; Standard 3.11, Psychological Services Delivered to or Through Organizations; also see IDEA, 2004; Jacob et al., 2011; NASP, 2010, I.1).

For school-based practitioners, the decision whether to allow a child the opportunity to choose (or refuse) school psychological services independent of the parent's wishes can be ethically challenging. The NASP-PPE states, "Ordinarily, school psychologists seek the student's assent to services; however, it is ethically permissible to by-pass student assent to services if the service is considered to be of direct benefit to the student and/or is required by law" (NASP, 2010, I.1.4). If a student's assent for services is not solicited, school psychologists nevertheless inform students about the nature and scope of services to be provided. Also, when a child

> is given a choice regarding whether to accept or refuse services, the school psychologist ensures the student understands what is being offered, honors the student's stated choice, and guards against overwhelming the student with choices he or she does not wish or is not able to make. (NASP, 2010, I.1.4; also see Jacob et al., 2011)

[1]Hereafter the term *parent* will be used to refer to the individual who has the authority to make decisions and can include the natural or adoptive parent, an individual acting in the place of a parent such as a stepparent or domestic partner, or an adult student acting on his or her own behalf.

School psychologists "encourage and promote parent participation in school decisions affecting their children" (NASP, 2010, I.1.1). However, as one of the members of a school's instructional support staff, school-based practitioners also provide consultative services to student assistance teams and in classrooms that do not fall within the scope of a psychologist–client professional relationship. Ethically and legally, school-based consultative services do not require informed parent consent if the resulting interventions are under the authority of the teacher, within the scope of typical classroom interventions, and are not intrusive of pupil or family privacy beyond what might be expected in the course of ordinary school activities (Burns, Jacob, & Wagner, 2008; Corrao & Melton, 1988; IDEA, 2004; NASP, 2010, I.1.1).

In addition, many school districts have policies that allow children to be seen by school health or mental health professionals without parent consent for one or several meetings to ensure that the student is not in danger (e.g., child abuse) or a danger to self or others. However, in schools, when minors self-refer for assistance, parent consent typically is sought to provide continuing psychological services to a child after it is determined that the student is not in danger (NASP, 2010, I.1.2). In contrast, under federal and state law, community-based providers may be permitted to treat minors for certain health and mental health conditions (e.g., mental illness, drug and alcohol abuse, pregnancy management, treatment of sexually transmitted diseases) independent of parent notice or consent, with the minor's treatment records considered to be under his or her own control (Boonstra & Nash, 2000). For this reason, school-based practitioners at times may need to refer students who desire assistance without parent involvement to community-based providers.

Confidentiality

Confidentiality is "an explicit promise or contract to reveal nothing about an individual except under conditions agreed to by the source or subject" (Siegel, 1979, p. 251). Although primarily a matter of professional ethics, in some states, psychologists can be held civilly liable under state law for impermissible breach of client confidentiality. With the exception of urgent situations, school psychologists define the parameters of confidentiality at the outset of establishing a school psychologist–client professional relationship (APA, 2010, General Principle E; Standard 4.02, Discussing the Limits of Confidentiality; also see NASP, 2010, I.2.3). When working with students, the parameters of the promise of confidentiality will vary depending on the age and maturity of the student, the reason for referral, and the nature of the services offered (e.g., individual counseling, assessment, and intervention for learning or behavioral problems; Jacob et al., 2011). Whatever the parameters, the circumstances under which the school psychologist might share confidences with others must be clear (Fisher, 2008; Koocher & Keith-Spiegel, 2008). If information learned within a school psychologist–client relationship is shared with third parties, such information is disclosed only on a *need-to-know basis* (NASP, 2010, I.2.5). Furthermore, only information necessary for communicating and resolving a student's difficulties in the school setting is disclosed internally to other school staff (Fisher, 2008; also APA, 2010, General Principle E; Standard 4.04, Minimizing Intrusions on Privacy; Standard 4.05, Disclosures; NASP, 2010, I.2; Schwab & Gelfman, 2005).

It is critically important for school-based psychologists to discuss confidentiality and its limits with parents when seeking consent to provide ongoing counseling to a minor. Because parents have access to all school psychological records of their child as defined by FERPA (1974), they also may feel entitled to know everything their child discloses to the school psychologist. The practitioner must explain to parents why a promise of confidentiality to the child can be essential to an effective helping relationship and seek parent understanding and agreement that the school psychologist will not disclose specific confidences shared by the child to the parent without the child's assent to do so. Parents need to be reassured, however, that the practitioner will let them know what they can do to help their child and that he or she will inform them immediately if there is a serious situation, such as one suggesting their child is in danger (Jacob et al., 2011; NASP, 2010, I.2.4).

When school psychological services are provided within the context of an established psychologist–client relationship, there are several situations in which a school psychologist may be obligated to share confidential communications revealed in that relationship with third parties. Like psychologists in nonschool settings, school-based practitioners have a mandatory duty to report suspected child abuse to a child protection agency. Depending on state law, psychologists in nonschool settings may, or may not, have a legal duty to breach confidentiality to protect a client or others from danger. In contrast, in school-based practice, confidential information must be disclosed to others as a necessary to safeguard schoolchildren from *reasonably foreseeable risk of harm*[2] (NASP, 2010, Introduction; Russo, 2006; Schill, 1993). *Reasonably foreseeable risk of harm* is a less stringent standard for breach of confidentiality than *clear* or *imminent danger*, terms often used in state laws regulating mental health providers. In addition, courts have ruled that schools must contact parents if it is suspected that a student may be suicidal (e.g., *Eisel v. Board of Education of Montgomery County*, 1991; Jacob, 2009). School-based practitioners also are required to adhere to district procedures for determining whether a student poses a threat to others and for warning potential victims of targeted violence. (More information on responding to threats of harm can be found in Volume 1, Chapter 14, this handbook.)

In a survey of NASP school psychology practitioners, Dailor and Jacob (in press) found that within the previous year, about one fourth of 208 respondents had experienced the dilemma of deciding what information to disclose to the parents of a minor who is engaging in risky behavior. Although limited research is available, school psychologists' decisions to report a minor student's risky behavior to a parent is likely influenced by the age and maturity of the child; the frequency, duration, and intensity of the behavior (e.g., limited experimentation with alcohol use versus frequently consuming multiple alcoholic drinks); and the dangerousness of the risky behavior (e.g., experimentation with marihuana versus cocaine; Rae, Sullivan, Peña Razo, & Garcia de Alba, 2009). If it becomes apparent in working with a student that confidentiality must be broken, the decision to divulge information also should be discussed with the student. Taylor and Adelman (1989) have suggested three steps: (a) explaining to the pupil the reason for disclosure, (b) exploring with the pupil the likely repercussions in and outside the student–psychologist relationship, and (c) discussing with the student how to proceed in a manner that will minimize negative consequences and maximize potential benefits (also see Fisher, 2008).

Privileged Communication

The term *evidentiary privilege* refers to the legal right of the client (the parent of a minor child) to prevent disclosure in court (in some circumstances) of information revealed in an established psychologist–client relationship. In the years since the 1996 *Jaffee v. Redmond* Supreme Court decision, many, but not all, states broadened the scope of their laws governing privilege to include nondoctoral school psychologists. The general rules of privilege for mental health providers and common exceptions are summarized in Aronson (2001) and Jacob and Powers (2009). School psychologists are ethically obligated to be familiar with the laws governing privilege in the state where they practice (NASP, 2010, I.2.2). (More information on these issues can be found in Volume 1, Chapter 13, this handbook.)

School-Based Record Keeping Under FERPA

FERPA (1974) was passed to protect the privacy of student education records and to ensure parent access to the education records of their own child. No federal funds will be made available to schools unless they adhere to the record-keeping policies outlined in FERPA.[3] The U.S. Department of Health and Human Services (HSS) together with the Department of Education (DOE) determined that the Health Insurance Portability and Accountability Act of 1996 (HIPAA,

[2]This standard emerged from civil lawsuits against school districts in cases involving foreseeable injury to a student.

[3]The summary of FERPA (1974) focuses on the law as it applies to elementary and secondary schools and is based on the 2009 electronic *Code of Federal Regulations* (C.F.R.) and revisions published in the *Federal Register* on December 9, 2008.

1996) privacy rule generally does not apply to elementary and secondary education records protected by FERPA (see HHS & DOE, 2008, for a detailed discussion of this issue, including implications of HIPAA for Medicaid billing, school-operated health clinics, and contracted health services).

In accordance with FERPA (1974), parents have access to all official school education records of their child, the right to challenge the accuracy of those records, and the right to an impartial hearing regarding their accuracy. The rights of the parent transfer to the student when he or she reaches the age of majority, but parents continue to have access to their high school student's education records as long as their son or daughter is a dependent as defined by tax law. Aside from parents, education records are to be disclosed only to those in the school setting with a "legitimate educational interest" in the student, and parent consent generally must be obtained before personally identifiable student education records are released to persons or agencies outside of the school. Parents may file a complaint about FERPA violations with the DOE's Family Compliance Office. FERPA does not confer a personal right to enforcement by means of Section 1983 lawsuits against schools.

Under FERPA (1974), *education records* are defined as any records maintained by the schools (or agencies or consultants to whom a school has outsourced services) that are directly related to the student (34 C.F.R. § 99.3; 99.35). At the elementary and secondary level, the term *education records* includes records maintained by a school health or mental health professional (HHS & DOE, 2008); no distinction is made between the records of a school psychologist and other types of student education records. Information included in the student's school psychological record as defined by FERPA is not considered privileged because it is accessible to parties outside of an established school psychologist–client professional relationship (*J. N. v. Bellingham School District No. 501*, 1994).

The definition of *education record* under FERPA (1974) excludes *sole possession records*, described as "records 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 except a temporary substitute for the maker of the record" (34 C.F.R. § 99.3). Under FERPA, it is thus permissible for a school-based psychologist to keep private notes about their contacts with clients that are separate from student education records. Under FERPA (1974), IDEA (2004), and Section 504 (Rehabilitation Act of 1973), however, parents must have access to the data that forms the basis of education decisions regarding their child, and consequently information that the school practitioner discloses or makes available to others in the school setting must be placed in the student's education record (Martin, 1979). In some circumstances, a school-based practitioner may wish to keep private notes regarding communications by a client. For example, if a parent asked for a referral to a community-based drug or alcohol treatment specialist, the practitioner might make a note to him or herself (sole possession record) to follow up this request to ensure that the parent was able to locate a satisfactory treatment option. If a school-based practitioner believes that it is necessary to keep private notes regarding certain communications by a client, such information should not shared with anyone including a substitute, and should be kept separately in a secure file not accessible to anyone but the school psychologist. The private notes of a nondoctoral school psychologist may, or may not, be privileged under state law; however, if a school psychologist's records are subpoenaed, a client will more likely be successful in asserting that the psychologist's "sole possession records" are privileged communications if the notes were not shared with anyone.

ASSESSMENT AND INTERVENTION UNDER IDEA

This discussion focuses on assessment and intervention under IDEA Part B (2004), the portion of IDEA that provides funds to states that offer special education and related services to students with disabilities ages 6 through 18 (or ages 3 through 21 as determined by state law). To receive funds, each state educational agency (SEA) must have on file with the DOE a plan to offer a free and appropriate education to all students ages 6 through 18 with disabilities residing within the state. DOE monitors compliance

with IDEA at the state level and only indirectly (through review of the state plan). The SEA is responsible for ensuring compliance within the state. It is important to recognize that IDEA is not a fully funded mandate; it funds only a modest portion of the extra expenses that schools incur in providing special education to students with disabilities.

IDEA (2004) has a *child find* requirement. The SEA must implement procedures to locate, identify, and evaluate all children with suspected disabilities within the state (34 C.F.R. § 300.111[a]). If a student is suspected of having a disability under IDEA and may need special education, then the school is required to conduct an individual evaluation of the child in accordance with IDEA procedures and timelines unless the parents do not consent to the evaluation. Schools are not required to evaluate students only on the basis of parental suspicion of a disability. However, when parents request a special education eligibility evaluation of their child and the school decides not to evaluate the child, the school must provide the parent with written notice of the refusal to evaluate along with information describing parent rights to challenge that decision (see Burns et al., 2008).

IDEA Part B (2004) funds are earmarked to provide special education and related services only for students with a disability as defined by the law. *A child with a disability* means a child evaluated in accordance with the procedures in the law and who is found to qualify as having a disability in 1 of 13 categories: intellectual disability, hearing impairment, deafness, speech or language impairment, visual impairment, blindness, deaf-blindness, serious emotional disturbance, orthopedic impairment, autism, traumatic brain injury, other health impairment, or specific learning disability; and who, for that reason, needs special education and related services (34 C.F.R. § 300.8[a]). Identification of a pupil as eligible for special education is *a two-pronged determination*: (a) a disability must be documented and (b) a need for special education must be established. Furthermore, a child is not eligible for special education and related services if his or her academic difficulties are due to a lack of appropriate instruction in reading or math, or limited English proficiency (34 C.F.R. § 300.306[b]).

School-based practitioners are ethically obligated to conduct psychoeducational evaluations consistent with an ecological model of assessment, taking into account the multiple factors that affect school learning and behavior, including instructional variables, the characteristics of the referred student, and support available from home for school achievement (NASP, 2010, II.3; Ysseldyke & Christenson, 1988). Under IDEA Part B (2004), children must be assessed on the basis of testing and evaluation procedures that are *multifaceted* (based on a variety of assessment tools and strategies), *comprehensive* (the child is assessed in all areas related to the suspected disability), technically adequate and *valid* for the purpose used, *fair* (nondiscriminatory), and *useful* (provide information that directly assists in determining educational needs; IDEA, 2004, 34 C.F.R. § 300.304; also NASP, 2010, II.3).

The IDEA Part B (2004) definitions of *a child with a disability* (34 C.F.R. § 300.8), along with the criteria for determining eligibility (34 C.F.R. §§ 300.306–311), have been the source of many parent–school disagreements regarding whether a child is eligible for special education within the meaning of the law. Considerable disagreement exists among experts regarding how to operationalize the federal definitions of *autism*, *specific learning disability*, *other health impairmen*t (which includes attention deficit disorders), and *emotional disturbance*; and differing criteria for eligibility under those definitions are used in different states, a situation that Weber (2009) aptly called "the IDEA eligibility mess." For example, IDEA allows states to identify a child as having a *specific learning disability* if a significant and unusual discrepancy exists between aptitude (intelligence quotient) and achievement scores, the child is found to have an information-processing deficit, or on the basis of the child's failure to respond to school interventions that were implemented with integrity (called responsiveness to intervention; see Burns et al., 2008).

In addition, confusion sometimes arises because nonschool mental health professionals are trained to use a system for classifying childhood disorders that differs from IDEA (2004), namely the *Diagnostic and Statistical Manual of Mental Disorders* (4th ed., text

revision; *DSM–IV–TR*; American Psychiatric Association, 2000). To add to the confusion, *DSM–IV–TR* criteria often are used in the schools to identify students with certain impairments such as attention disorders or autism. Although a *DSM–IV–TR* diagnosis may assist in determining eligibility under IDEA, it is not required by federal law, and it alone is not sufficient to determine whether a student is eligible for special education under IDEA Part B (Zirkel, 2009d).

For example, under IDEA Part B (2004), the term *emotional disturbance*

> means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance: (a) an inability to learn that cannot be explained by intellectual, sensory, or health factors; (b) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; (c) inappropriate types of behavior or feelings under normal circumstances; (d) a general pervasive mood of unhappiness or depression; (e) a tendency to develop physical symptoms or fears associated with personal or school problems.

The definition goes on to say that "emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance" (34 C.F.R. § 300.8). The IDEA definition of emotional disturbance has been controversial since it was adopted in 1975. Generally, however, to qualify as a child with a disability within the category of emotional disturbance, the disturbance must be observable to school personnel. The definition "avoids presumptions about the child's intrapsychic condition, psychiatric nosology, or clinical designation" (Slenkovich, 1988, p. 57). When a child is found to be eligible for special education because he or she meets IDEA criteria for emotional disturbance, the label is an education classification *not* a diagnosis.

The determination of whether a student is a child with a disability under IDEA Part B (2004) is made by a group of persons (the Individualized Education Program [IEP] team) that includes, among others, the child's parents, an individual qualified to interpret evaluation data, a current or potential future teacher of the child, and an individual qualified to provide or supervise special education (see 34 C.F.R. § 300.321[a]). Consistent with the ethical obligations of school psychologists, IDEA requires schools to promote parent participation in the decision-making process (34 C.F.R. § 300.501[b]).

Under IDEA Part B (2004), parents have the right to obtain an *independent educational evaluation* (IEE) of their child, and those findings must be considered by the school "in any decision made with respect to the provision of [a free appropriate public education] to the child." An IEE is an evaluation conducted by a qualified examiner who is not an employee of the district responsible for the education of the child in question. The school, on request, must provide parents with information about the district's criteria for an IEE and where one may be obtained (34 C.F.R. § 300.502), and IEE examiners must be allowed to observe the child in question in his or her classroom. Depending on the circumstances, an IEE may be conducted at parent or school expense. If the parent disagrees with the evaluation done by the school, the district is required, with no unnecessary delay, to either ensure that an IEE is conducted at district expense or initiate a due process hearing if it believes its evaluation was appropriate. If the hearing officer determines that the evaluation was appropriate, parents may proceed with an IEE, but at their own expense (see 34 C.F.R. § 300.502; also Zirkel, 2009b).

If a child is determined to be eligible for special education and related services, the student must be offered an appropriate education as outlined in his or her IEP. Decisions regarding the content of the child's IEP are made by a group of persons (the IEP team) that includes the parents. The required components of an IEP are outlined in the law (34 C.F.R. § 300.320) and include a description of the child's current levels of educational performance, annual goals, how his or her progress will be measured, the extent to which the child will participate in classes and activities with nondisabled children, and the

specific special education and related services to be provided.

The U.S. Supreme Court interpreted the meaning of *appropriate education* in its 1982 *Board of Education of the Hendrick Hudson Central School District v. Rowley* decision, and set forth a two-pronged test: "Were IDEA procedures followed in developing the IEP?" and "Is the program reasonably designed to benefit the child?" *Rowley* and subsequent decisions indicate that IDEA (2004) ensures only an education *reasonably designed to confer benefit* to the individual student, and not the best possible or most perfect education. Also, schools, not parents, have the authority to select specific instructional methodologies as long as the methods chosen are considered to be acceptable evidence-based practices.

A child who is eligible for special education under IDEA Part B (2004) also is eligible for related services but only if those services are required to assist a child with a disability to benefit from special education. *Related services* include school psychological services, such as counseling and individualized behavioral interventions (34 C.F.R. § 300.34[a]). However, schools are not required to provide medical, including psychiatric, treatment.

In accordance with IDEA (2004), a student with a disability must be educated in the *least restrictive environment* (LRE) appropriate to the child. This means that, as much as feasible, children with disabilities

> are educated with children who are nondisabled, and special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (34 C.F.R. § 300.114[a][2])

Congress intended the SEA to make available a continuum of alterative placements to meet the needs of students with disabilities, including placement in the general education classroom with supplementary services, special classes, and residential facilities (34 C.F.R. § 300.15). In developing the IEP, placement in the general education classroom with supplementary services is considered to be "the rebuttable presumption." This means that decision making by the IEP team begins with the assumption that a child with a disability can be educated satisfactorily in the general education classroom when provided supplementary services, but the team may determine that child requires a more restrictive setting. In *Sacramento City Unified School District, Board of Education v. Rachel H.* (1994) the court indicated that the following factors should be considered in determining the LRE appropriate for the student: (a) the educational benefits available in a general education classroom, supplemented with appropriate aids and services, as compared with the educational benefits of a special education classroom or other setting; (b) the nonacademic benefits of interaction with children who are not disabled; (c) the effect of the child's presence (e.g., disruptive behavior) on the teacher's ability to teach and on the learning of other children in the class; and (d) the cost of educating the child in a general education classroom. However, the cost must be significantly more expensive than alternative placements to justify an exclusion from the general education classroom on the basis of cost. *Daniel R.R. v. Texas State Board of Education* (1989) and *Brillon v. Klein Independent School District* (2004) suggested that a fifth factor also can be considered in making placement decisions, namely, whether the child can benefit from the general education curriculum without substantial and burdensome curricular modifications.

Under IDEA Part B (2004), the SEA must ensure that each school district implements procedures to safeguard the parent's right to confidentiality of records and right to examine their child's records (including their child's answers as recorded on psychological test protocols); right to participate in meetings with respect to the identification, evaluation, and placement of their child; right to consent to the initial evaluation and placement of their student and right to withdraw him or her from special education; right to written prior notice before changes are made in identification, evaluation, placement, and special services; right to present findings from an IEE; right to resolution of complaints by mediation; right to resolution of complaints by an impartial

hearing officer; and right to bring civil action in court. Parents (and schools) generally must exhaust administrative remedies (e.g., mediation) before filing a civil action in court. Courts, at their discretion, may award reasonable attorney fees to the parents if they are the prevailing party in a civil action (34 C.F.R. §§ 300.506–518; also see Rooker, 2005, 2008, on parent rights to review their child's answers on test protocols).

ASSESSMENT AND INTERVENTION UNDER SECTION 504/ADAA

As noted, Section 504 of the Rehabilitation Act of 1973 is civil rights legislation that prohibits discrimination against pupils with disabilities in school systems receiving federal financial assistance. The Act states,

> No otherwise qualified handicapped individual . . . shall, solely by reason of his handicap, be excluded from the participation in, or be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (29 U.S.C. § 794)

Unlike IDEA (2004), Section 504 provides no funds to schools. Section 504 does not require states to develop a written plan to meet the requirements of the law, but every school district must designate at least one person to coordinate its efforts to comply with the law and adopt grievance procedures for the prompt and equitable resolution of complaints alleging violations of 504 (34 C.F.R. § 104.7).

The Section 504 definition of *handicapped* was amended by the Americans With Disabilities Amendments Act of 2008 (ADAA, 2008) and hereafter the term *504/ADAA* disability will be used. Section 504/ADAA defines *a disability* as a physical or mental impairment that substantially limits one or more of the major life activities of the individual (Sec. 12102).[4] Major life activities include, but are not limited to, functions such as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, speaking, walking, breathing, learning, concentrating, thinking, and communicating. Furthermore, the determination of whether a physical or mental impairment *substantially limits* a major life activity is made without regard to the "ameliorative effects of mitigating measures," such as medication, assistive technology, or aids or services (Sec. 12102 [4][E]). The term *disability* does not apply to impairments that are transitory (actual or expected duration of 6 months or less) and minor (Sec. 12102 [3][B]), but an impairment that is "episodic or in remission" is a disability if it would substantially limit a major life activity when active (Sec. 12102 [4][D]).

The definition of *disability* under 504/ADAA (2008) is thus broader and more open ended than IDEA (2004; Zirkel, 2009a). Students who are disabled under IDEA are considered to have a disability under 504/ADAA. Contemporary interpretations suggest that schools receiving federal funds must attend to three types of potential discrimination prohibited by Section 504: schools are prohibited from excluding students from participating in school programs and activities solely on the basis of a disability, are required to take reasonable steps to prevent harassment on the basis of disability, and are required to make accommodations to ensure that pupils with disabilities have equal opportunity to benefit from its programs and activities as their peers without disabilities.

An evaluation of a student is required if it is believed that the student may qualify as having a disability as defined by 504/ADAA (2008) and may need special school services or accommodations. Schools must notify parents of their rights regarding the identification, evaluation, and placement of children with suspected disabilities before initiating a Section 504 evaluation (34 C.F.R. § 104.32). Like IDEA (2004), schools are not required to evaluate children only on the basis of parental suspicion of a 504/ADAA impairment. When a school does not agree with a parental request for evaluation, it must inform parents of their right to contest that decision. A child who is evaluated because of a suspected disability under IDEA Part B but found not eligible

[4]The ADAA (2008) language quoted in this chapter is based on the text of U.S. Code as amended by ADAA and was retrieved from the Americans With Disabilities Act website (http://www.ada.gov/pubs/adastatute08mark.htm).

should be considered for possible eligibility under 504/ADAA.

When a student is not eligible for special education under IDEA (2004), but it is suspected that he or she may have a 504/ADAA (2008) disability, the Section 504 evaluation regulations require determination of the following: (a) Is there a physical or mental impairment? (b) Does that impairment substantially limit a major life activity? and (c) What kind of accommodations would be needed so that the student will be able to enjoy the benefits of the school program (Martin, 1992)? Section 504 does not require a specific categorical diagnosis, only the determination of a condition that substantially impairs one or more major life activities at school and that requires special accommodation by the school.

Under Section 504, schools are required to establish standards and procedures for the evaluation of pupils who, because of a suspected impairment, are believed to need special school accommodations. The 504 regulations regarding evaluation procedures (34 C.F.R. § 104.35) are almost identical to those in IDEA Part B (2004). Like IDEA, a *DSM–IV–TR* diagnosis may assist in determining eligibility under 504/ADAA (2008), but it is neither legally required nor sufficient to make a 504/ADAA eligibility determination under federal law (Zirkel, 2009d).

Appropriate education is defined in Section 504 as the provision of regular or special education and related aids and services: "(a) that are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (b) are based on adherence to procedural safeguards" outlined in the law (34 C.F.R. § 104.33). Section 504, like IDEA (2004), also requires schools to educate student who have disabilities with students who do not have disabilities to the maximum extent appropriate to the needs of the student with a disability (34 C.F.R. § 104.34). The law itself does not specifically require a written 504 accommodation plan for students with 504/ADAA (2008) disabilities; however, education experts recommend a written plan be developed (Zirkel, 2009c). The 504/ADAA accommodation plan must be developed by a group of persons, including the child's parents and persons knowledgeable of the evaluation data.

DOE memoranda, court cases, and administrative hearings under Section 504 have addressed the nature of accommodations required for students with mental impairments who do not also qualify as having a disability under IDEA (2004). Accommodations for a student with a mental impairment under 504/ADAA (2008) must be made on the basis of individual need and must, at a minimum, provide assistance to ensure educational opportunity equal to peers without disabilities. The kinds of accommodations identified as acceptable by the DOE and in court cases typically have been classroom or school modifications that a teacher or school psychologist might recommend, such as preferential seating, repeating and simplifying instructions, additional time for test taking, shortened homework assignments with extended due dates, interventions based on applied behavior analysis, individual or group counseling at school, and adult assistance with the administration or monitoring of medications (e.g., DOE, 1991).

Procedural safeguards in Section 504 regulations are stated in more general terms than those in IDEA Part B (2004) and must include "notice, an opportunity for the parents or guardian to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure" (34 C.F.R. § 104.36).

The Office for Civil Rights (OCR) is charged with investigating Section 504 complaints pertaining to DOE programs or activities. The OCR investigates individual complaints and a parent may trigger an investigation of school district compliance with 504 by filing a complaint with OCR. In addition, parents have the right to initiate a court action against the school on behalf of a child with 504/ADAA (2008) impairments if they believe the school has violated the provisions of Section 504 with respect to their child. The courts may award reasonable attorney fees as part of the costs to parents when they are the prevailing party in a Section 504 lawsuit.

In summary, under IDEA (2004), schools must offer a child with a disability an individualized education program reasonably designed to confer benefit, not the best possible or most perfect program. Section 504 only ensures educational opportunities for students with disabilities that are equal to their peers

without disabilities. Every child with a disability must be offered an education in the LRE where his or her schooling can be satisfactorily achieved. Fortunately, changes in federal law (e.g., IDEA, 2004) have resulted in expanded opportunities for school psychologists to plan and monitor scientifically based academic and behavior interventions for general education students who are struggling to be successful. These early intervening services can prevent student failure and reduce unnecessary eligibility testing and misclassification under IDEA (e.g., Burns et al., 2008).

ETHICALLY CHALLENGING SITUATIONS IN SCHOOL-BASED PRACTICE

Regardless of their specialty area, most psychologists encounter ethical dilemmas in their careers that involve competing ethical principles, conflicts between ethics and law, or difficulties in determining how broad ethics code statements apply to a particular situation. In school-based practice, practitioners also 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" (NASP, 2010, Introduction). Thus, school-based practitioners often are required to manage the conflicting interests of multiple parties (children, parents, teachers, school administrators, and systems) in decision making as well as the dilemmas inherent in the dual roles of school employee and pupil advocate (Dailor & Jacob, in press; Jacob-Timm, 1999).

Conflicts Between the Ethical Obligations of School Psychologists and the Culture of the Public Schools

In the following paragraphs, we discuss examples of conflicts between the ethical obligations of school psychologists and "the culture" of the public schools in the areas of managing sensitive student information, pressure from school administrators to make recommendations based on the interests of the district rather than the rights and needs of students, and the fine line between advocacy and insubordination.

Protecting sensitive student health and mental health information. School-based practitioners face complex challenges regarding how to protect sensitive student information because, as noted, FERPA (1974) does not make a distinction between school psychological and other types of student education records at the elementary- and secondary-school level. In some school districts (particularly those with itinerant service providers), school psychologists do not have the authority to control who has access to school psychological education records, and unlike HIPAA (1996), FERPA does not mandate training for school staff on safeguarding sensitive student information (Schwab et al., 2005). Also, it is important to recognize that ethical obligations such as safeguarding confidential client disclosures and sharing sensitive student information only on a need-to-know basis are part of the professional duties and training of health and mental health professionals, but not school administrators. The terms *need-to-know* and *privileged communication* typically do not appear in the topic index of textbooks on public school law (e.g., Russo, 2006).

Sensitive health or mental health information might be received by a school psychologist in a report written by a physician or community-based mental health provider that was released by the parents to the school or that was communicated orally by the parent or student. Additionally, as in Case Example 1, a practitioner might uncover sensitive information as a result of the assessment process (Jacob et al., 2011). Two issues are addressed here: (a) the exchange of sensitive student information between schools and community-based mental health providers and (b) the disclosure of sensitive information within the school setting.

It is likely that tension always will exist between a school's perceived need for personal information about students and the right of students and their parents to be free from unnecessary intrusions on their privacy (e.g., *Merriken v. Cressman*, 1973). School administrators may demand that parents release their child's *complete* medical or mental health records to the school, particularly if the child is suspected of having a disability under IDEA (2004) or Section 504 (e.g., *Shelby by Kathleen T. v. Conroe Independent School District*, 2006). Schwab et al. (2005), however, recommended the use of HIPAA-compliant authorization forms when schools request health or

mental health information from outside providers or agencies. This form should identify the names of the certified or licensed school professionals (e.g., school nurse, school psychologist) who are being given permission to receive and use the information. The form also should identify the specific types of information requested, why the information has been requested and how it will be used (e.g., eligibility under IDEA or Section 504, educational program planning, ensuring appropriate school health care services). As Schwab et al. (2005) noted, it is rarely necessary or appropriate for a school to request release of a child's complete medical or mental health records.

It also is critically important that community-based providers discuss with parents and adult students the content of the records to be released to the schools, and advise them against disclosing information "not germane to the request" (VandeCreek, 2008, p. 373). As VandeCreek wrote, "The most complete way to fully inform clients is to share the record (or the information to be shared) with the client before sending it on" (p. 373). Parents may not understand that sensitive information filed by the school in their child's education record is not protected by HIPAA (1996), is not privileged, can be accessed by the student at the age of majority, and may be available to school staff who have not received formal training on how to handle sensitive information.

FERPA (1974) generally requires written consent of the parent (or adult student) before disclosure of personally identifiable student information to external (nonschool) providers and agencies. FERPA regulations, however, provide little guidance regarding what, if any, sensitive student information to share with others who have "legitimate educational interests" within the school setting (Schwab & Gelfman, 2005).

Case Example 1

Maria Delgado, PhD, is a licensed psychologist as well as a certified school psychologist. After completing a doctoral internship in a pediatric health care setting and her licensure requirements, she accepted a position as a school psychologist in a public school system. She received a referral to evaluate Tara, age 11, whose achievement in math is well below grade expectations, even after multiple small-group interventions were attempted in the general education classroom. Tara's parents signed a consent form providing permission for a school evaluation to determine whether their daughter might be a child with a disability under IDEA (2004). During her assessment, Dr. Delgado observed that Tara is an anxious child. She also observed that Tara frequently counted on her fingers while working on addition problems and, when given multiplication problems, made tally marks on the side of the answer sheet. Further informal assessment confirmed that Tara had not mastered basic addition or multiplication facts; simple math calculations were not automatic, making it difficult for her to tackle the challenges of fifth-grade math. Dr. Delgado also found that Tara's school records showed many absences due to illness, that Tara often goes home early from school because of complaints of a headache or upset stomach, and that their family doctor has not found a medical cause for these recurring symptoms. On the basis of her assessment findings, Dr. Delgado determined that in addition to possible eligibility under IDEA, Tara met the diagnostic criteria for somatoform disorder, a diagnosis based on the *DSM–IV–TR*. At her doctoral internship site, Dr. Delgado was required to prepare comprehensive psychological reports, incorporating child medical and developmental history; extensive family background information; and her assessment findings, including, when appropriate, a *DSM–IV–TR* diagnosis. Dr. Delgado is unsure whether to include Tara's *DSM–IV–TR* diagnosis in the psychological report she is preparing for the IEP meeting to determine whether Tara is a student with a disability. (Jacob et al., 2011)

Although Dr. Delgado in Case Example 1 had parent consent to conduct a psychoeducational assessment of Tara to determine possible eligibility under IDEA (2004), she had not sought permission to render a *DSM–IV–TR* diagnosis. Consistent with her ethical obligations to ensure parent consent for services and to assist them in making informed decisions, she arranged to meet with Tara's parents in private to discuss her findings, including the benefits of including the somatoform disorder diagnosis in her report to the IEP team (e.g., possibly assisting instructional staff in understanding Tara's emotional functioning) and the disadvantages (the diagnosis could be misunderstood by instructional staff; the diagnosis will appear in educational records not managed by the school psychologist). As a result of the meeting, Tara's parents requested that Dr. Delgado's report for the IEP team focus on providing only the information necessary to make decisions regarding eligibility under IDEA and on identifying individualized interventions that are likely to assist Tara, especially in math. They also agreed that Tara is an anxious child who would benefit academically and emotionally from counseling to learn better strategies to cope with stress—findings that should be shared with the IEP team. Dr. Delgado discussed community- and school-based counseling and psychotherapeutic treatment options for their daughter (NASP, 2010, II.3.10) and identified the possible financial costs of various options. She also provided them with a list of strategies developed by pediatric experts for parents and teachers explaining how to help children learn to participate in school and other daily activities even if the child is experiencing physical discomforts. Dr. Delgado offered to coordinate implementation of the strategies at school and at home, and Tara's parents readily agreed. Finally, Dr. Delgado reviewed the decisions that will be made at the upcoming IEP team meeting and encouraged Tara's parents to express their opinions at the meeting.

Consistent with the need-to-know principle that appears in our ethics codes, Schwab and Gelfman (2005) advised school-based health and mental health professionals to disclose private student information to others within the school setting only "when necessary in order to benefit the student" (p. 267). Information disclosure should focus on communicating the student's functional health, academic, and behavioral difficulties and explain how to respond. In keeping with emerging standards for the management of sensitive student information in the pubic schools (e.g., Schwab et al., 2005), it is appropriate to have a credentialed school-based health or mental health professional review, in collaboration with the parents, any sensitive medical or mental health information obtained about their child, to determine what information should be shared with others in the school setting to assist the student (see Pine-Richland [PA] School District, 2009). Some medical and *DSM–IV–TR* diagnoses can be stigmatizing and misunderstood by school staff. Furthermore, when sensitive student information is shared with school staff, the school psychologist and parents lose control over its redisclosure (Fisher, 2008).[5]

Perhaps because of HIPAA (1996), many parents now have a greater expectation of ownership and control of health information about their child in the school setting, and a few states have passed legislation to better protect the privacy of student health information maintained by public schools. We believe that school-based health and mental health providers should be allowed to serve as custodians and gatekeepers who, in partnership with parents, control disclosure of sensitive information about a student to others within the school setting. In addition, staff training in the management of sensitive student information should be required in all schools (see Schwab et al., 2005).

The rights and needs of students and parents versus school administrative pressures. Although school administrators share a commitment to promoting the welfare of all students, they face pressures to base decisions on "the good of the whole" rather than the needs of an individual student and

[5]Unfortunately, in some schools, private health information about students is shared internally without consideration of the "need-to-know" principle, family privacy rights, or the obligation to ensure nondiscriminatory treatment of students with physical or mental impairments. The Office for Civil Rights investigation of the Pine-Richland (PA) School District (2009) was initiated after school staff required a child (without prior parent permission) to stand up and talk about her health condition (confidential health information) in front of her second-grade classmates.

to carefully manage limited resources (Denig & Quinn, 2001). Not surprisingly, in several studies, school-based psychologists reported pressure from their supervisors to put the administrative needs of the district (e.g., contain costs) ahead of the rights and needs of students, especially students with suspected or known disabilities (Dailor & Jacob, in press; Jacob-Timm, 1999).

Case Example 2

Joshua, a student with a disability under IDEA (2004), was placed at a private school after the district's IEP team, including his parents, the school psychologist, and the director of special education, unanimously agreed that the private school's program was the least restrictive setting available to meet Joshua's complex special education needs. The school district's superintendent, concerned about the expense of the private school, convened an IEP meeting at the end of the school year with the stated purpose of discussing Joshua's fall placement. The superintendent knew that Joshua's parents wished their son to continue at the private school because of his excellent progress there and that the school psychologist likely agreed with them. Before the IEP meeting, the superintendent left a voicemail message for Mrs. Bronson, the school psychologist, informing her that "the district" had no intention of allowing Joshua's private school placement to continue and that she expected Mrs. Bronson's "full cooperation" in the matter.

Mrs. Bronson and the district's director of special education typically began each IEP team meeting with a review of the issues the team should consider in making eligibility, classification, and placement decisions; statements encouraging the parents to participate in the decision-making process; and queries to ensure that the parents are aware of their legal rights under IDEA. To their surprise, the school district superintendent not only attended but also took charge of the IEP meeting regarding Joshua's future placement. The superintendent began by stating that the purpose of the IEP meeting was to discuss Joshua's "transition" from the private school to the district's own special education program in the fall. Given the superintendent's introductory comments, how can Mrs. Bronson ensure that Joshua's parents will feel comfortable voicing their opinions during the meeting regarding an appropriate placement for their son? How can she speak up for the legal rights of the parents and the needs of the student and at the same time maintain a positive working relationship with her employer?

Some district administrators treat parents, students, and staff with respect and fairness, including them as much as feasible in school decisions that affect them. Other administrators, however, expect unquestioned deference to their decision-making authority. Unlike teachers and other instructional staff, the school psychologist's obligation "to speak up for the rights and welfare of students and families, and to provide a voice to clients who cannot or do not wish to speak for themselves" is codified in their code of ethics and emphasized in their training (NASP, 2010, Definitions). As Miller (2009) wrote, school psychologists "must, in a quiet and yet determined fashion," help administrators understand that in protecting the rights of students with disabilities, we also are "protecting the school district, and we are protecting them" (pp. 17–18). Consistent with the principle of respect for the dignity of persons, school psychology practitioners must ensure that clients have a voice in decisions that affect them. Furthermore, in keeping with the principles of honesty and integrity in professional relationships and responsibility to families (NASP, 2010, III, IV), Mrs. Bronson has an obligation to ensure that Joshua's parents have a clear understanding of the purposes of the meeting (i.e., to determine an appropriate fall placement), the process of decision making (what issues the team is legally required to consider), and their role in that process. To achieve this, Mrs. Bronson must reframe

the meeting in a way that not only is respectful of the district superintendent, but also fosters a collaborative partnership between parents and school professionals, with the goal of developing an IEP that is reasonably designed to confer benefit in the LRE appropriate to Joshua's individual needs.

Although Case Example 2 is fictitious, in *H. Berry by Berry v. Virgenes Unified School District* (2010), the 9th circuit held that a school district's IEP proceedings violated IDEA (2004) because the district predetermined a child's placement. More specifically, the school district superintendent's introductory statements at an IEP meeting (as in Case Example 2) indicated that she already had decided to remove the child from a private school before the IEP meeting with the parents. Furthermore, the parents were not afforded a meaningful opportunity to participate in the IEP meeting, including the placement decision. In addition to the legal costs to the school district of defending its administrator's inappropriate actions, the court's ruling likely will allow the parents to receive reimbursement for their attorney fees from the school district.

Advocacy Versus Insubordination

The 2006 U.S. Supreme Court *Garcetti v. Ceballos* decision suggested that school-based practitioners, as state actors, could be disciplined or dismissed for publically criticizing the practices of the school districts where they are employed if speaking in their official job role rather than as private citizens. School-based practitioners have whistleblower protection, however, if they expose unlawful actions by their employer. NASP-PPE obligates practitioners to advocate for the rights and interests of students and families, but its definition of *advocacy* goes on to state: "Nothing in this code of ethics . . . should be construed as *requiring* school psychologists to engage in insubordination (willful disregard of an employer's *lawful* instructions) . . . as part of their advocacy efforts" (NASP, 2010, IV.2.3; emphasis added). Regardless of the situation, however, school psychologists do not participate in school actions that violate basic human rights.[6]

Jacob (2008) encouraged school-based practitioners to discuss concerns about problematic school policies or actions using within-school venues, to emphasize the positive potential effects of alternative practices rather than simply criticizing existing ones, and to clearly identify when they are speaking as an employee versus speaking as a private citizen (also see NASP, 2010, IV.2.4; Zirkel, 2008). (More information on institutional conflicts can be found in Volume 1, Chapter 5, this handbook.)

RESOLVING ETHICAL DILEMMAS

Like psychologists in other specialty areas, school psychologists are encouraged to take a proactive stance to avoid ethical dilemmas and to use a systematic problem-solving model when difficult situations arise (Koocher & Keith-Spiegel, 2008; McNamara, 2008; Williams et al., 2008;). They also are encouraged to "strive for excellence" (Knapp & VandeCreek, 2006) rather than simply meeting the minimum ethical obligations outlined in codes of ethics and to "engage in the lifelong learning that is necessary to achieve and maintain expertise in applied professional ethics" (NASP, 2010, Introduction). Jacob (2008) also has provided suggestions for school-based practitioners on developing an ethical practice.

Collaboration Between School-Based Practitioners and Psychologists in Other Settings

Federal laws such as FERPA (1974), IDEA (2004), and Section 504 (1973) are complex and amended periodically, and the regulations implementing them frequently are revised. Furthermore, various courts have issued differing interpretations of their language and meaning. Finally, the majority of statutes and rules that directly affect school district policies are enacted at the state level. School attorneys, administrators, instructional staff, school psychologists, and parents all may have reasonable but differing interpretations of what FERPA, IDEA, and Section 504 require, prohibit, and permit.

School personnel struggle to keep abreast of changing education laws and regulations, and they may falter in their interpretation or implementation

[6]The basic human rights of students in the school setting were discussed in Jacob et al. (2011) under the topics of behavioral interventions and corporal punishment.

of what is legally required. On the other hand, parents may be frustrated or discouraged by their child's difficulties at school; angry and mistrusting of school personnel; and, understandably, have their own beliefs about their child's needs and what the school should do to address those needs. School psychologists are obligated to explain, as clearly as feasible, the school's responsibilities as well as parent and student rights under IDEA (2004), Section 504 (1973), and FERPA (1974). The ethical practice of school psychology "involves continuously working to foster open and honest communication" with parents (Dailor, 2007, p. 33). Unfortunately, many school–parent disagreements escalate, resulting in due process hearings and lawsuits. Between 1995 and 2003, special education litigation alone resulted in more than 1,500 judicial decisions in the United States (Norlin, 2004). This number is just the tip of the iceberg because informal and administrative remedies typically must be exhausted before a lawsuit is filed, and some lawsuits are settled before a judicial decision is rendered.

The NASP-PPE states the following:

> To best meet the needs of children and other clients, school psychologists cooperate with other psychologists and professionals from other disciplines in relationships based on mutual respect. They encourage and support the use of all resources to best serve the interests of students. (NASP, 2010, III.3.1)

School–community collaboration can result in improved health, mental health, and educational outcomes for youth (see Eagle, Dowd-Eagle, & Sheridan, 2008). Collaborative efforts between school- and community-based mental health providers are most likely to benefit students when such collaborations are formed on the basis of effective communication and positive cooperation, including respect for and understanding of differing professional roles and employment contexts; a shared commitment to empowering parents to make informed choices about their child's education and mental health needs; and a shared commitment to preventing misunderstandings among parents, schools, and community-based providers.

However, because unhappy parents often seek IEEs or expert testimony from nonschool psychologists or psychiatrists while pursuing the dispute resolution remedies available under IDEA (2004) or Section 504 (1973), school- and community-based practitioners may find themselves in adversarial rather than collaborate roles. In Table 7.1 we identify some of the ways in which school-based practice may differ from the provision of psychological services in nonschool settings. Although the table only offers a simplistic summary, this information highlights some of the subtle but important differences between school-based and non-school-based practice. Improved communication across settings might increase the likelihood that parent–school disagreements regarding a child's education needs and rights can be resolved informally, without triggering adversarial due process hearings and lawsuits under IDEA or Section 504. It is our belief that effective and positive collaboration among school-based psychologists, community-based providers, and parents can keep the best interests of the child at center stage.

References

American Psychiatric Association. (2000). *Diagnostic and statistical manual of mental disorders.* (4th ed., text revision). Washington, DC: Author.

American Psychological Association. (2010). *Ethical principles of psychologists and code of conduct (2002, Amended June 1, 2010).* Retrieved from http://www.apa.org/ethics/code/index.aspx

Americans With Disabilities Act Amendments, Pub. Law No. 110-325 (2008).

Aronson, R. H. (2001). Symposium: The uniform rules of evidence (1999): The mental health provider privilege in the wake of *Jaffee v. Redmond*. *Oklahoma Law Review, 54,* 591–612.

Bersoff, D. N., & Koeppl, P. M. (1993). The relation between ethical codes and moral principles. *Ethics and Behavior, 3,* 345–357. doi:10.1207/s15327019eb0303&4_8

Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176, 102 S. Ct. 3034 (1982).

Boonstra, H., & Nash, E. (2000). *Minors and the right to consent to health care.* Retrieved from http://www.guttmacher.org/pubs/tgr/03/4/gr03404.pdf

Brillon v. Klein Independent School District, 100 Fed. App. 309, 2004 U.S. App. LEXIS 11235 (5th Cir. 2004).

Brown v. Board of Education, 347 U.S. 483 (1954).

Burns, M. K., Jacob, S., & Wagner, A. (2008). Ethical and legal issues associated with using responsiveness-to-intervention to assess learning disabilities. *Journal of School Psychology, 46,* 263–279. doi:10.1016/j.jsp.2007.06.001

Burnside v. Byars, 363 F. 2d 744 (5th Cir. 1966).

Canadian Psychological Association. (2000). *Canadian code of ethics for psychologists* (3rd ed.). Retrieved from http://www.cpa.ca

Charvat, J. L. (2008). *Estimates of the school psychology workforce.* Retrieved from http:www/nasponline.org/advocacy/SP_Workforce_Estimates_9.08.pdf

Civil Rights Act, 42 U.S.C.A. § 1983 (1871).

Corrao, J., & Melton, G. B. (1988). Legal issues in school-based behavior therapy. In J. C. Witt, S. N. Elliot, & F. M. Gresham (Eds.), *Handbook of behavior therapy in education* (pp. 377–399). New York, NY: Plenum Press.

Curtis, M. J., Lopez, A. D., Castillo, J. M., Batsche, G. M., Minch, D., & Smith, J. C. (2008). The status of school psychology: Demographic characteristics, employment conditions, professional practices, and continuing professional development. *Communiqué, 36,* 27–29.

Dailor, A. N. (2007). *A national study of ethical transgressions and dilemmas reported by school psychology practitioners*. Unpublished master's thesis, Central Michigan University, Mt. Pleasant.

Dailor, A. N., & Jacob, S. (in press). Ethically challenging situations reported by school psychologists: Implications for training. *Psychology in the Schools.*

Daniel R. R. v. Texas State Board of Education, El Paso Independent School District, 874 F. 2d 1036 (5th Cir. 1989).

Denig, S. J., & Quinn, T. (2001). Ethical dilemmas for school administrators. *High School Journal, 84*(4), 43–49. doi:10.1353/hsj.2001.0009

Eagle, J. W., Dowd-Eagle, S. E., & Sheridan, S. M. (2008). Best practices in school–community partnerships. In A. Thomas & J. Grimes (Eds.), *Best practices in school psychology V* (pp. 953–967). Bethesda, MD: National Association of School Psychologists.

Eisel v. Board of Education Montgomery County, 597 A. 2d 447 (Md. 1991).

Family Educational Rights and Privacy Act of 1974, Pub. Law No. 93-38020, 20 U.S.C. § 1232g (2006). Regulations appear at 34 C.F.R. Part 99. Electronic e-CFR. Retrieved from http://ecfr.gpoaccess.gov

Fisher, M. A. (2008). Protecting confidentiality rights. *American Psychologist, 63,* 1–13. doi:10.1037/0003-066X.63.1.1

Flanagan, R., Miller, J. A., & Jacob, S. (2005). The 2002 revision of APA's ethics code: Implications for school psychologists. *Psychology in the Schools, 42,* 433–445. doi:10.1002/pits.20097

Garcetti v. Ceballos, 126 S. Ct. 1951, 2006 U.S. LEXIS 4341 (2006).

Goss v. Lopez, 419 U.S. 565, 95 S. Ct. 729 (1975).

H. Berry by Berry v. Las Virgenes Unified School District, 110 LRP 15671 (9th Cir. 2010). Retrieved from http:www.specialedconnection.com

Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-19126, 26 U.S.C. § 294, 42 U.S.C. §§ 201, 1395b-5 (2006).

Hubsch, A. W. (1989). Education and self-government: The right to education under state constitutional law. *Journal of Law and Education, 18,* 93–133.

Individuals With Disabilities Education Improvement Act of 2004, Pub. L. No. 108-46620, 20 U.S.C. §§ 1400 *et seq.* (2006). Regulations appear at 34 C.F.R. Part 300.

J. N. v. Bellingham School District No. 501, 74 Wn. App. 49, 871 P. 2d. 1106, 1994 Wash. App. LEXIS 197 (Wash. App. 1994).

Jacob, S. (2008). Best practices in developing ethical school psychological practice. In A. Thomas & J. Grimes (Eds.), *Best practices in school psychology V* (pp. 1921–1932). Bethesda, MD: National Association of School Psychologists.

Jacob, S. (2009). Putting it all together: Implications for school psychology. *School Psychology Review, 38,* 239–243.

Jacob, S., Decker, D. M., & Hartshorne, T. S. (2011). *Ethics and law for school psychologists* (6th ed.). Hoboken, NJ: Wiley.

Jacob, S., & Powers, K. E. (2009). Privileged communication in the school psychologist–client relationship. *Psychology in the Schools, 46,* 307–318. doi:10.1002/pits.20377

Jacob-Timm, S. (1999). Ethical dilemmas encountered by members of the National Association of School Psychologists. *Psychology in the Schools, 36,* 205–217. doi:10.1002/(SICI)1520-6807(199905)36:3<205::AID-PITS4>3.0.CO;2-A

Jaffee v. Redmond, 518 U.S. 1, 116 S. Ct. 1923, 135 L. Ed. 2d 337, 1996 LEXIS 3879, 64 U.S.L.W. 4490, 44 Fed. R. Evid. Serv. (Callaghan) 1, 95 Cal. Daily Op. Service 4192, 96 Daily Journal DAR 6783, 9 Fla. L. Weekly Fed. S 678 (1996).

Kitchener, K. S. (2000). *Foundations of ethical practice, research, and teaching.* Mahwah, NJ: Erlbaum.

Knapp, S., & VandeCreek, L. (2006). *Practical ethics for psychologists: A positive approach.* Washington,

DC: American Psychological Association. doi:10.1037/11331-000

Koocher, G. P., & Keith-Spiegel, P. (2008). *Ethics in psychology and the mental health professions: Standards and cases* (3rd ed.). New York, NY: Oxford University Press.

Martin, R. (1979). *Educating handicapped children: The legal mandate.* Champaign, IL: Research Press.

Martin, R. (1992). *Continuing challenges in special education law* [Looseleaf notebook]. Carle Media, Urbana, IL.

McNamara, K. (2008). Best practices in the application of professional ethics. In A. Thomas & J. Grimes (Eds.), *Best practices in school psychology V* (pp. 1933–1941). Bethesda, MD: National Association of School Psychologists.

Merriken v. Cressman, 364 F. Supp. 913 (E. D. Pa 1973).

Miller, F. L. (2009). Advocacy: The risks and rewards. *Communiqué, 38,* 17–18.

National Association of School Psychologists. (2007). *Ethical and Professional Practices Committee procedures.* Retrieved from http://www.nasponline.org

National Association of School Psychologists. (2010). *Principles for professional ethics.* Bethesda, MD: Author. Retrieved from http://www.naspweb.org

Norlin, J. (2004). *New York is top of the heap in special ed litigation.* Retrieved from http://www.specialedconnection.com/LrpSecStoryTool/servet/GetStory?docid=1962963

Pennsylvania Association for Retarded Citizens (P.A.R.C.) v. Commonwealth of Pennsylvania, 334 F. Supp. 1257 (E.D. Pa. 1971), 343 F. Supp. 279 (E.D. Pa. 1972).

Pine-Richland (PA) School District. (2009, June 19). 53 IDELR 200, 13 FAB 2, 40 NDLR 151, 109 LRP 69515, Office for Civil Rights, Eastern Division, Philadelphia (Pennsylvania). Retrieved from http://www.specialedconnection.com

Prilleltensky, I. (1991). The social ethics of school psychology: A priority for the 1990s. *School Psychology Quarterly, 6,* 200–222. doi:10.1037/h0088814

Prilleltensky, I. (1997). Values, assumptions, and practices: Assessing the moral implications of psychological discourse and action. *American Psychologist, 52,* 517–535. doi:10.1037/0003-066X.52.5.517

Rae, W. A., Sullivan, J. R., Peña Razo, N., & Garcia de Alba, R. (2009). Breaking confidentiality to report adolescent risk-taking behavior by school psychologists. *Ethics and Behavior, 19,* 449–460. doi:10.1080/10508420903274930

Rehabilitation Act of 1973 (Section 504), Pub. Law No. 93-11229, 29 U.S.C. § 794 (2006). Regulations implementing Section 504 appear at 34 C.F.R. Part 104.

Reschly, D. J., & Bersoff, D. N. (1999). Law and school psychology. In C. R. Reynolds & T. B. Gutkin (Eds.), *Handbook of school psychology* (3rd ed., pp. 1077–1112). New York, NY: Wiley.

Rooker, L. S. (2005, September 13). *Letter to Mr. Gary S. Mathews* (FERPA Online Library). Retrieved from http://www.ed.gov/policy/gen/guid/fpco/ferpa/library/carrollisd09305.html

Rooker, L. S. (2008, June 30). *Response to "Letter to Anonymous"* (Family Policy Compliance Office, 12 FAB 27; 109 LRP 7789). Horsham, PA: LRP Publications.

Ross, W. D. (1930). *The right and the good.* Oxford, England: Clarendon Press.

Russo, C. J. (2006). *Reutter's The law of public education* (5th ed.). New York, NY: Foundation Press.

Sacramento City Unified School District, Board of Education v. Rachel H., 14 F. 3d 1398 (9th Cir. 1994).

San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 93 S. Ct. 1278 (1973).

Schill, K. (1993, Fall). Violence among students: Schools' liability under Section 1983. *School Law Bulletin*, 1–11.

Schwab, N. C., & Gelfman, M. H. B. (2005). Confidentiality: Principles and practice issues. In N. C. Schwab & M. H. B. Gelfman (Eds.), *Legal issues in school health services: A resource for school administrators, school attorneys, school nurses* (pp. 261–295). New York, NY: Authors Choice.

Schwab, N. C., Rubin, M., Maire, J. A., Gelfman, M. H. B., Bergren, M. D., Mazyck, D., & Hine, B. (2005). *Protecting and disclosing student health information: How to develop school district policies and procedures.* Kent, OH: American School Health Association.

Shelby by Kathleen T. v. Conroe Independent School District, 454 F. 3d 450; 2006 U.S. App. LEXUS 16067 (5th Cir. 2006).

Siegel, M. (1979). Privacy, ethics, and confidentiality. *Professional Psychology, 10,* 249–258. doi:10.1037/0735-7028.10.2.249

Slenkovich, J. E. (1988, February). The seriously emotionally disturbed definition. *Schools' Advocate (Boston, Mass.)*, 153–164.

Taylor, L., & Adelman, H. S. (1989). Reframing the confidentiality dilemma to work in children's best interests. *Professional Psychology: Research and Practice, 20,* 79–83. doi:10.1037/0735-7028.20.2.79

Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 89 S. Ct. 733 (1969).

U.S. Department of Education. (1991). Joint policy memorandum. *Individuals with Disabilities Education Law Report, 18,* 116–119.

U.S. Department of Health and Human Services & U.S. Department of Education. (2008, November). *Joint guidance on the application of the Family Educational*

Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to student health records. Retrieved from http://www.ed.gov/policy/gen/guid/fpco/doc/ferpa-hipaa-guidance.pdf

VandeCreek, L. (2008). Considering confidentiality within broader theoretical frameworks. *Professional Psychology: Research and Practice, 39,* 372–373.

Weber, M. C. (2009). The IDEA eligibility mess. *Buffalo Law Review, 57,* 83–160.

Williams, B., Armistead, L., & Jacob, S. (2008). *Professional ethics for school psychologists: A problem-solving model casebook.* Bethesda, MD: National Association of School Psychologists.

Wisconsin v. Constantineau, 400 U.S. 433 (1971).

Ysseldyke, J. E., & Christenson, S. L. (1988). Linking assessment to intervention. In J. L. Graden, J. E. Zins, & M. J. Curtis (Eds.), *Alternative educational delivery systems* (pp. 91–109). Washington, DC: National Association of School Psychologists.

Zirkel, P. (2008). Child advocacy and "freedom" of expression. *Communiqué, 36,* 8–9.

Zirkel, P. (2009a). The ADAA and its effect on Section 504 students. *Journal of Special Education Leadership, 22,* 3–8.

Zirkel, P. (2009b). Independent evaluations at district expense under the Individuals With Disabilities Act. *Journal of Law and Education, 38,* 223–244.

Zirkel, P. (2009c). Section 504: Student eligibility update. *Clearing House (Menasha, Wis.), 82*(5), 209–211. doi:10.3200/TCHS.82.5.209-211

Zirkel, P. (2009d). A step-by-step process for § 504/ ADA eligibility determinations: An update. *West's Education Law Reporter, 239,* 333–343.