

Ethical Issues Surrounding Electronic Communications

Barbara Bole Williams, PhD, NCSP
Professor

Director of School Psychology Program
Rowan University
Glassboro, NJ

PA Department of Education
Annual Conference 2011

Objectives

1. Become familiar with the organization and content of the NASP 2010 *Principles for Professional Ethics*.
2. Gain knowledge of the ethical responsibilities regarding privacy, confidentiality and the use of electronic communication and digital technology.

Disclosures

I am a co-author, with Leigh Armistead and Susan Jacob, of *Ethical Principles for School Psychologists: A Problem-Solving Model Casebook* published by NASP.

I am a former member of the NASP Ethical and Professional Practices Committee, chaired the revision of the NASP 2010 *Principles for Professional Ethics* and a member NASP Ethics Advisory Panel.

What are ethics?

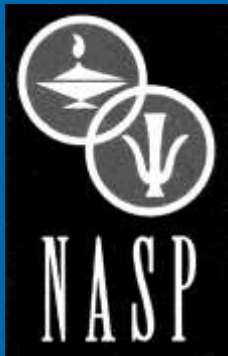
- Ethics is composed of a range of acceptable (or unacceptable) social and personal behaviors, from rules of etiquette to more basic rules of society.
- Develop within the context of a particular society or culture.
- W. D. Ross (1930), a 20th-century Scottish philosopher, identified these as the moral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



Applied professional ethics

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





Professional guidelines

- NASP 2010 *Principles for Professional Ethics*
- Other codes: APA, CPA
- NASP 2010 *Model for Comprehensive and Integrated School Psychological Services*
- Available at www.nasponline.org

STANDARDS FOR SCHOOL PSYCHOLOGY

Ethical and Professional Practices for School Psychologists

2010



Principles for Professional Ethics
Model for Comprehensive and Integrated
School Psychological Services



NATIONAL
ASSOCIATION OF
SCHOOL
PSYCHOLOGISTS

STANDARDS FOR SCHOOL PSYCHOLOGY

Graduate Preparation and Credentialing for School Psychologists

2010



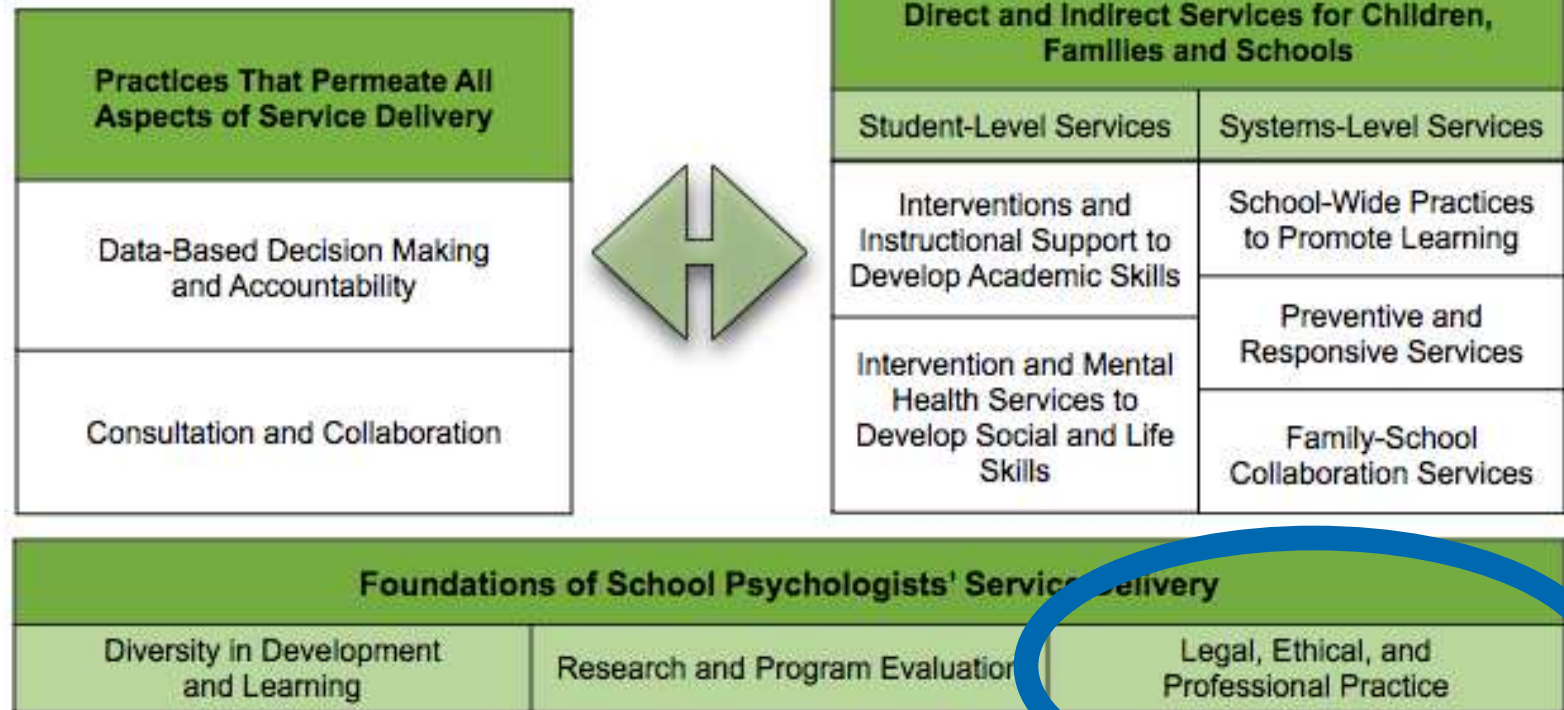
Standards for Graduate Preparation
of School Psychologists

Standards for the Credentialing
of School Psychologists



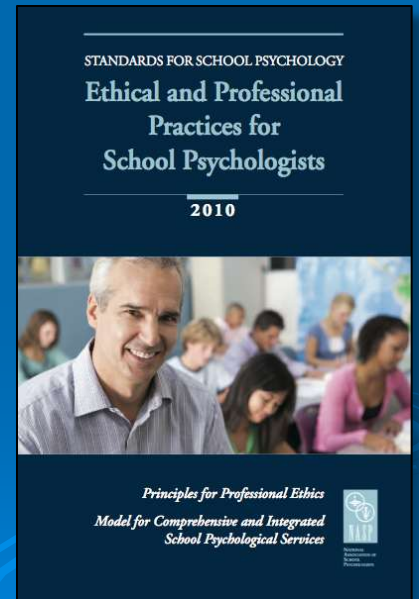
NATIONAL
ASSOCIATION OF
SCHOOL
PSYCHOLOGISTS

Professional Services by School Psychologists



NASP's 2010 *PPE*

- Organized differently
- Most current ethical principles are included
- Internal conflicts in 2000 *Principles* were resolved
- Recent laws and court opinions were taken into account
- Revised code should be easier to teach, learn, and interpret
- Code is optimized for school-based practice



Reorganization

- The 2010 code is organized around four broad ethical themes adapted from other ethical codes
- The four broad themes subsume 17 ethical principles.
- Each principle is then further articulated by specific standards of conduct.

Themes

Principles

Standards

Four broad ethical themes

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

Look through your copy to find these headings.

I. Respecting the Dignity and Rights of All Persons

“School psychologists engage only in professional practices that maintain the dignity of children and other clients. 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.” (p. 3)

II. Professional Competence and Responsibility

“Beneficence, or responsible caring, means that the school psychologist acts to benefit others, or at least do no harm. To do this, school psychologists must practice within the boundaries of their competence, use evidence-based knowledge from psychology and education to help clients and others make informed choices, and accept responsibility for their work.” (p. 6)

III. Honesty and Integrity in Professional Relationships

“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.” (p. 9)

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

“School psychologists promote healthy school, family, and community environments. They maintain the public trust in school psychologists by respecting law and encouraging ethical conduct. School psychologists advance professional excellence by mentoring less experienced practitioners and contributing to the school psychology knowledge base.” (p. 11)

I. Respecting the Dignity and Rights of All Persons

School psychologists engage only in professional practices that maintain the dignity of children and other clients. 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.

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

Principle I.2. Privacy and Confidentiality

Principle I.3. Social Justice

II. Professional Competence and Responsibility

Beneficence, or responsible caring, means that the psychologist acts to benefit others, or at least do no harm. To do this, school psychologists must practice within the boundaries of their competence, use evidence-based knowledge from psychology and education to help clients and others make informed choices, and accept responsibility for their work.

Principle II.1. Competence

Principle II.2. Accepting Responsibility for Actions

Principle II.3. Responsible Assessment and Intervention Practices

Principle II.4 Responsible School-based Record Keeping

Principle II.5 Responsible Use of Materials

III. Honesty and Integrity in Professional Relationships

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.

Principle III.1. Accurate Presentation of Professional Qualifications

Principle III.2. Forthright Explanation of Professional Services, Roles, and Priorities

Principle III.3. Respecting Other Professionals

Principle III.4. Multiple Relationships and Conflicts of Interest

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

School psychologists promote healthy school, family, and community environments. They maintain the public trust in school psychologists by respecting law and encouraging ethical conduct. School psychologists advance professional excellence by mentoring less experienced practitioners and contributing to the school psychology knowledge base.

Principle IV.1. Promoting Healthy School, Family, and Community Environments

Principle IV.2. Respect for Law and the Relationship of Law and Ethics

Principle IV.3. Maintaining Public Trust by Self-Monitoring and Peer Monitoring

Principle IV.4. Contributing to the Profession By Mentoring, Teaching, and Supervision

Principle IV.5. Contributing to the School Psychology Knowledge Base

So, What About?

Privacy
Confidentiality
Electronic Communications

* Some of the material in this section is adapted from Jacob, S., Decker, D. M., & Hartshorne, T.S. (in press). *Ethics and Law for School Psychologists* (6th ed.). Hoboken, NJ: Wiley.

Principle I.2. Privacy and Confidentiality

School psychologists respect the right of persons to choose for themselves whether to disclose their private thoughts, feelings, beliefs, and behaviors.

Standard I.2.1 School psychologists respect the right of persons to self-determine whether to disclose private information.

Standard I.2.2. School psychologists minimize intrusions on privacy. They do not seek or store private information about clients that is not needed in the provision of services. School psychologists recognize that client-school psychologist communications are privileged in most jurisdictions, and do not disclose information that would put the child or family at legal, social, or other risk if shared with third parties except as permitted by the mental health provider-client privilege laws in their state.

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

Privacy

- Privacy is having control over the extent, timing, and circumstances of sharing oneself (physically, behaviorally, or intellectually) with others.

Right to Privacy

- Not in Constitution but is an established right through case law.
- Student right to privacy is not absolute. It's balanced against state responsibilities.

Statutory Law re Privacy

- *IDEA*: requires informed consent prior to evaluation
- *Family Educational Rights and Privacy Act of 1974 (FERPA)*: protects privacy of records
- *Protection of Pupil Rights Act (2001)*: can't intrude on pupil or family privacy by collecting sensitive information without parent notification and opportunity to opt out

NASP *PPE* and Privacy

➤ Let's also consider:

- Standard I.2.1: respecting privacy rights
- Standard I.2.2: minimizing intrusion on privacy
- Standard I.2.6: privacy and sexual orientation
- Standard I.2.7: privacy and sensitive health information

Confidentiality

- Not a right. Rather...an *agreement* with a client and it's our professional obligation.
- We maintain confidentiality to protect privacy

“**Standard I.2.4.** School psychologists respect the confidentiality of information obtained during their professional work. Information is not revealed to third parties without the agreement of a minor child's parent or legal guardian (or an adult student), except in those situations in which failure to release information would result in danger to the student or others, or where otherwise required by law. Whenever feasible, student assent is obtained prior to disclosure of his or her confidences to third parties, including disclosures to the student's parents.

Electronic Communication and Other Digital Issues

➤ Issues such as:

- Web-based or network-based record keeping systems
- Emailing sensitive information

➤ Three standards directly apply

Standard II.4.5

“School psychologists take steps to ensure that information in school psychological records is not released to persons or agencies outside of the school without the consent of the parent except as required and permitted by law.”

Standard II.4.6

“To the extent that school psychological records are under their control, school psychologists ensure that only those school personnel who have a legitimate educational interest in a student are given access to the student’s school psychological records without prior parent permission or the permission of an adult student.”

Standard II.4.7

“To the extent that school psychological records are under their control, school psychologists protect electronic files from unauthorized release or modification (e.g., by using passwords and encryption), and they take reasonable steps to ensure that school psychological records are not lost due to equipment failure.”

Harvey and Carlson's (2003) *School Psychology Review* Article

- School psychologists have an ethical imperative to determine ways computers [*and now other methods of electronic communications*] can facilitate practice
- But also have parallel imperative to consider carefully ethical and professional practice implications
- Those aspects of the use of electronic communications that render them helpful also create potential vulnerable to ethical and legal concerns.

Email

- NASP *PPE* standards on privacy and confidentiality apply regardless of transmission method.
- FERPA "clearly does not allow an educational . . . institution to leave education records unprotected or subject to access by unauthorized individuals, whether in paper, film, electronic, or any other format. We interpret this prohibition to mean that an educational . . . institution must use physical, technological, administrative and other methods, including training, to protect education records in ways that are reasonable and appropriate to the circumstances in which the information or records are maintained."

Top 8 Issues about Using Electronic Communication Related to Student Records*

- Treat email as a request for information
- Treat email with respect; regular emails are not secure
- Treat email as part of pupil records; any email with identifying information (first name, last name or initials)
- Limit amount of email contacts regarding student records

*Thanks to contributions from Parker McCay PA Attorneys at Law, Lawrenceville, NJ

Top 8 Issues about Using Electronic Communication Related to Student Records*

- If using email, keep it brief with no narratives, gossip or inappropriate reference to parents or students
- Attorneys will say emails are “discoverable” for work and home computers
- Print out email and keep in file; it is part of pupil record
- If you are not sure about how to respond to an email, consult with your Director of Special Services or School Board Attorney

*Thanks to contributions from Parker McCay PA Attorneys at Law, Lawrenceville, NJ

What are some of the ethical considerations when using technology ?

- Use of technology has exploded and continues to impact ethical practices
 - Facebook, Twitter, blogs (other social media)
 - Read Bill Pfohl's two-part article on Ethics and Technology in the November and December 2010 *Communiqué*
- Computers, smart phones and data storage devices are places where data are stored, retrieved and shared
- With each new advance we run the risk of potential ethical and legal issues

What are some of the ethical considerations when using technology ?

- *EPP* recommends using a problem-solving approach when attempting to resolve issues, even those related to electronic communication
- *Responsibility remains with the school psychologist*
- *Attempt to follow the ethical and legal requirements*

Other issues involving electronic communication:

- School districts use databases to store student files and reports
- Are parents notified?
- Is the database secure and protected by firewalls, passwords and encryption? Is it connected to other networks, which could compromise confidentiality?
- What about sharing computers, common databases and data storage? Threats to confidentiality.
- All databases need to be password protected.
- Memory storage devices and USB drives should be protected/encrypted.
- What about digitized records stored by school districts?

Other issues involving electronic communication:

- Pfohl reminds us that “deleting a file doesn’t really delete it.” It can be easily recovered.
- New copy machines have hard drives inside, so copies you make of information about a student is stored there. How is the data cleaned or protected? Is the drive wiped clean before it is sold or returned to the company when the lease is up?
- Faxes should only be sent to a secure FAX machine.
- You need to take precautions that others cannot modify your reports without YOUR permission.
- Other issues with storage of records
 - School networks should have passwords and firewall protection
 - Cloud data storage is becoming the norm and comes with threats to confidentiality, etc.

Other issues involving electronic communication:

- How do you sign an electronic file that you have accessed?
- With scanners, faxes and other machines that are capable of making permanent files, protection and confidentiality must be ensured.
- What other issues will occur as we move from paper to electronic records?

What are some of the problems with rapid changes in technology?

- Reports written and kept on computers
- Emailing reports to other professionals
- Scoring software programs
- Etc., etc., etc.

A few easy precautions you can implement when you return to your office . . .

- Password protect documents and records
- Email only PDF versions when emailing must occur (watch “reply to all”)
- When possible, transmit only hard copies
- Verify intended recipient

So. . . back to the 2010 NASP *PPE* with some concluding comments

- The 2010 NASP *Principles* should be more helpful than the previous version.
- Look for specific advice for common professional problems in the standards.
- With more specificity for school-based practice, you'll find less ambiguity
- Use the problem-solving process to handle issues related to electronic communications, etc.

While reading the 2010 *PPE*,

make notes of suggestions for the 2020 *PPE*. Work will start on them in 2017.

Can you imagine where we'll be in 2020 re: electronic communications?

