

ETHICAL AND LEGAL ISSUES IN PSYCHOEDUCATIONAL ASSESSMENT

Psychological testing and assessment techniques, in common with most tools, can be used for a diversity of purposes, some destructive and some constructive, and their use cannot be separated from the training, competence, and ethical values of the clinical-user (Matarazzo, 1986, p. 18).

This chapter focuses on ethical and legal issues associated with the assessment of individual students within the context of an established school psychologist-client relationship.

TESTING VERSUS ASSESSMENT

In their work with teachers, parents, and children (and in their own thinking), it is important for school psychologists to distinguish between *testing* and *assessment*. Testing and assessment are not synonymous, interchangeable terms (Matarazzo, 1986). A test is a tool that may be used to gather information as part of the assessment process. Assessment is a broader term. Mowder (1983) defined the assessment process as "the planning, collection, and evaluation of information pertinent to a psychoeducational concern" (p. 145). A psychoeducational assessment of a student referred for individual evaluation is conducted by a psychologist trained to gather a variety of different types of information (e.g., school and health history; cultural, language, and experiential background; observations; test results) from a number of different sources (e.g., student, teacher, parents) and to interpret or give meaning to that information in light of the unique characteristics of the student and his or her situation.

Practitioners also need to be familiar with the distinction between the medical and ecological models of school psychological assessment. In past years, practitioners often were trained to accept a medical model that views learning and behavior problems as a result of within-child disorders or disabilities. In contrast, the ecological model encourages an assessment approach that takes into account the multiple factors that affect learning and behavior, including classroom variables, teacher and instructional variables, characteristics of the referred student, and support available from the home for school achievement. The ecological perspective has gained acceptance because it is viewed as potentially more beneficial to the child. To reverse a student's pattern of poor progress, systematic assessment of factors in the child's learning environment is needed (Ysseldyke & Christenson, 1988). Messick (1984) suggested that, ethically, a

child should not be exposed to the risk of misdiagnosis unless deficiencies in instruction first have been ruled out (also NASP-PPE II.3.1).

The psychologist has certain preassessment responsibilities to the parent and student. After discussing these responsibilities, we address ethical-legal concerns associated with assessment planning; the selection and evaluation of tests and testing practices; data collection and interpretation; report writing, and sharing findings. Nondiscriminatory assessment and projective personality assessment then are discussed. The final portions of the chapter focus on the professional issues of competence and autonomy in conducting psychoeducational evaluations and ethical-legal issues associated with computer-assisted assessment, including the use of Web-based digital assessment platforms.

Codes of ethics, professional testing standards, and law provide guidelines for psychological assessment in schools. The National Association of School Psychologists (NASP) "Principles for Professional Ethics" (2010b) and the American Psychological Association's (APA's) "Ethical Principles of Psychologists and Code of Conduct" (2010) each include ethical principles for psychological assessment. The *Standards for Educational and Psychological Testing*, or *Standards* (American Educational Research Association, APA, & National Council on Measurement in Education, 2014)¹, provides criteria for psychologists and educators to use in the evaluation of assessment practices. The *Standards* has no official legal status. However, the *Standards* has been referred to in federal regulations concerning acceptable testing practices, and it has been cited in Supreme Court cases as an authoritative source on issues concerning the technical adequacy of testing practices (Adler, 1993).

The Individuals with Disabilities Education Improvement Act of 2004 (IDEIA) and Section 504 of the Rehabilitation Act of 1973 each outline legal requirements for evaluation procedures used in the identification of children with disabilities. The regulations for IDEIA—Part B pertaining to tests and evaluation procedures are shown in Exhibit 6.1.

PREASSESSMENT RESPONSIBILITIES

Consistent with the ethical obligation "to respect the right of persons to participate in decisions affecting their own welfare" (NASP-PPE I.1), school psychologists "encourage and promote parent participation in school decisions affecting their children" (NASP-PPE I.1.1). However, as will be discussed here and in Chapter 7, not all of their assessment services require informed parent consent.

Parental Involvement and Consent

Practitioners are ethically obligated to seek informed consent to establish a psychologist-client relationship for the purpose of conducting a school psychological evaluation of a student (NASP-PPE I.1.2), and consent, oral or written, should

¹The *Standards for Educational and Psychological Testing* (American Educational Research Association, American Psychological Association, & National Council on Measurement in Education, 2014) includes explanatory text (cited by page number) and numbered standards (cited by standard number, e.g. "3.13").

Exhibit 6.1 Excerpts from IDEIA Regulations on Evaluation Procedures

Sec. 300.304 Evaluation procedures.

- (a) Notice. The public agency must provide notice to the parents of a child with a disability, in accordance with Sec. 300.503, that describes any evaluation procedures the agency proposes to conduct.
- (b) Conduct of evaluation. In conducting the evaluation, the public agency must—
 - (1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—
 - (i) Whether the child is a child with a disability under Sec. 300.8; and
 - (ii) The content of the child's IEP [individual education program], including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);
 - (2) Not use any single procedure as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and
 - (3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
- (c) Other evaluation procedures. Each public agency must ensure that—
 - (1) Assessments and other evaluation materials used to assess a child under this part—
 - (i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;
 - (ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;
 - (iii) Are used for the purposes for which the assessments or measures are valid and reliable;
 - (iv) Are administered by trained and knowledgeable personnel; and
 - (v) Are administered in accordance with any instructions provided by the producer of the assessments.

- (2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
- (3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
- (4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;
- (5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same academic year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with Sec. 300.301(d)(2) and (e), to ensure prompt completion of full evaluations.
- (6) In evaluating each child with a disability under Sec. 300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.
- (7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

Authority: 20 U.S.C. 1414[b][1-3], 1412[a][6][B]

be appropriately documented (APA-EP 3.10d, 9.03; NASP-PPE I.1.3; *Standards* 8.4). Consent is given by the parent of a minor child or another adult acting in the place of a parent. A student who has reached the age of majority or who is an emancipated minor typically may consent on his or her own behalf (see Chapter 3).² Under IDEIA, written consent (34 CFR § 300.9) of the parent is needed to conduct an initial evaluation of a child to determine if the child has a disability as defined in the law. However, it is important to understand that parent consent for an initial evaluation "must not be

²The term *parent* is used here to refer to an individual who has the legal authority to provide consent and make decisions.

construed as consent for the initial provision of special education and related services" (34 CFR § 300.300[a][1][ii]); that is, parents have a legal right to consent to an evaluation but may later refuse special education and related services even if their child is found to be a child with a disability under IDEIA. IDEIA also requires parent consent for subsequent reevaluations, unless the school can demonstrate that it has taken reasonable measures to obtain consent and the child's parent failed to respond (34 CFR § 300.300[c]).

Parent consent is not required for a review of existing student data as part of an evaluation or reevaluation (34 CFR § 300.300[d][1][i]). In addition, "the screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation is not considered to be an evaluation requiring parental consent under IDEA" (34 CFR § 300.302). *Screening* is "typically a relatively simple and quick process" to "identify strategies a teacher may use to more effectively teach children" (U.S. DOE, 2006, p. 46639). The question of who is considered a "specialist" is left to the discretion of the school district. Consequently, school psychologists may participate in the screening of students without parent consent if the purpose of the screening is to inform the teacher about appropriate instructional strategies for children (U.S. DOE, 2006, p. 46639). (Also see Chapter 7.)

Professional standards and IDEIA are highly similar with regard to the necessary components of the informed consent agreement for psychoeducational assessment. According to the *Standards* (8.4) and consistent with IDEIA (34 CFR § 300.9), the parent granting permission for the psychoeducational evaluation should be made aware of the reasons for the assessment, the types of tests and evaluation procedures to be used, what the assessment results will be used for, the types of records (paper and digital) that will be created, and who will have access to those records. This information must be presented to the parent in his or her native language or other mode of communication (also see NASP-PPE I.1.3). Parents must be informed that their consent is voluntary and they may revoke it at any time (34 CFR § 300.9; also NASP-PPE I.1). School psychologists also are ethically obligated to "respect the wishes of parents who object to school psychological services and attempt to guide parents to alternative resources" (NASP-PPE I.1.5).

In recent years, tension sometimes has arisen between school psychology practitioners and parents (or their advocates) regarding the tests and other assessment materials to be used in evaluating a child suspected of having a disability. For example, in *G.J. v. Muscogee County School District* (2012), the parents of a child with a disability added an addendum to the school's proposed assessment plan with seven conditions the school had to agree to before the parents would consent to having their child reevaluated under IDEIA. The parents would not consent to an IDEIA reevaluation unless all of the specific instruments to be used were pre-identified in the assessment plan and the psychological evaluation was conducted by a named licensed psychologist. The school declined to agree to the addendum conditions. The parents subsequently filed a lawsuit against the school. The court held that the school has the right to develop the assessment plan and the parent has the right to accept or decline the proposed plan. The parent has no legal right to negotiate the assessment plan. Thus, while it is "best practice" to listen and respond respectfully to the parents' input about the proposed assessment plan for their child, the school, not the parent, has the right to determine

who will conduct an assessment of a child with a suspected IDEIA disability and the assessment instruments to be used.

Many states and school districts have developed materials for parents describing evaluation procedures and the assessment instruments used by multidisciplinary team members. Many districts also have developed forms for parents to sign to consent to a school psychological evaluation of their child. However, school-based practitioners are cautioned to ensure that they have a shared understanding with the individual providing consent regarding the nature and scope of the proposed psychological evaluation. For example, are parents providing informed consent for an evaluation of whether their child has a disability as defined by IDEIA and/or a disability as defined by Section 504 of the Rehabilitation Act of 1973? Are they providing consent for psychological diagnosis (e.g., *Diagnostic and Statistical Manual of Mental Disorders* [DSM-5], American Psychiatric Association, 2013)? Although DSM-5 criteria may be used in identifying children with disabilities under IDEIA or Section 504 (e.g., autism or attention deficits), parents and eligible students should be given an explicit choice regarding whether they consent to a DSM-5 diagnosis as part of a school district's psychoeducational evaluation.

Most parents cooperate with school attempts to secure approval for psychoeducational assessment. However, under IDEIA, if the parent fails to provide consent for an initial evaluation of a child with a suspected disability, the school *may* use mediation and other due process procedures (e.g., a hearing by an impartial hearing officer) in an effort to overrule parent failure to consent. However, schools are *not required* to pursue an initial evaluation of a child with a suspected disability if the parent fails to provide consent to do so (34 CFR § 300.300[a][3][i]). Furthermore, if the parent of a child who is homeschooled or parentally placed in a private school does not provide consent for an initial evaluation or reevaluation under IDEIA, or fails to respond to a request for consent, the school may not use IDEIA consent override procedures, and it is not required to consider the child as eligible for services (34 CFR § 300.300[d][4]).

Consistent with our ethical standards for consent, school psychologists should be aware that, under IDEIA, the parents or an adult student may withdraw consent for assessment or special education placement or services at any time, and this withdrawal of consent must be honored (34 CFR 300.9[c][1]). If a parent revokes consent for assessment, it is "not retroactive," that is, "it does not negate an action that has occurred after the consent was given and before the consent was revoked" (34 CFR 300.9[c][2]). School psychologists should not destroy records of a partially completed evaluation without first notifying the parent.

Responsibilities to the Student

In addition to prior parental consent to initiate a psychoeducational evaluation of an individual student, school psychologists also have a number of obligations to the student. As noted in Chapter 3, children are not seen as *legally* competent to make autonomous decisions about whether to participate in a psychological assessment; minors have no *legal* right "to consent, assent, or object to proposed psychoeducational evaluations" (Bersoff, 1983, p. 153). In our opinion, it is ethically permissible