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ETHICS AND LAW

FOR SCHOOL PSYCHOLOGISTS

EIGHTH EDITION



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Eighth Edition

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To the memory of my son, Andrew Alan Neal (1982-2009) and Nancy and Tim Hartshorne's children, Michael David Salem Hartshorne (1984-1992) and Katherine Swift Hartshorne (1991-1992).

— S. J.

To my parents, Gary and Kathleen Picklo; my husband Eric Decker; and my two children, Miles and Max.

— D. D.

To my seven sons Jay, William, John, David, Hugh, Robert, and Edward, who provide purpose to my life.

— E. L.

To my family for their ongoing love and support.

— E. D.

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Preface

There are a number of excellent texts, journal articles, and book chapters on ethics in psychology, legal issues in school psychology, and special education law. However, in the late 1980s, the authors of the first edition of this book recognized a need for a single sourcebook on ethics and law specifically written to meet the unique needs of the psychologist in the school setting. Consequently, *Ethics and Law for School Psychologists* was written to provide up-to-date information on ethical principles and standards and law pertinent to the delivery of school psychological services. Our goals for this eighth edition of the book remain unchanged. We hope that the book will continue to be useful as a basic textbook or supplementary text for school psychology students in training and as a resource for practitioners. In addition, we hope it will also be a valuable resource for scholars interested in ethical and legal issues in the field of school psychology.

As stated in the preface to the first edition, one goal in writing the book was to bring together various ethical and legal guidelines pertinent to the delivery of school psychological services. We also introduce an ethical-legal decision-making model that supports socially just practice (Diamond et al., 2021). We concur with the suggestion that the educated practitioner is the best safeguard against ethical-legal problems (Koocher & Keith-Spiegel, 2008). School psychologists with a broad knowledge base of ethics and law are likely to anticipate and prevent problems. Use of a decision-making model allows the practitioner to make informed, well-reasoned choices in resolving problems when they do occur (Cottone, 2012; Eberlein, 1987; Tymchuk, 1986).

WHAT'S IN THE BOOK

Chapter 1 provides an introduction to ethical codes; the DECIDE ethical-legal decision-making model (Diamond et al., 2021); and the four broad ethical principles of respect for 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. We also describe ethics committees and sanctions for unethical conduct. [Chapter 2](#) provides an introduction to the legal underpinnings of school-based practice and to public school law that protects the rights of students and their parents. We also address certification and licensure of school psychologists—mechanisms that help to ensure that psychologists meet specified qualifications before they are granted a legal sanction to practice. The chapter closes with a brief discussion of tort liability of schools and practitioners. In [Chapter 3](#), we discuss privacy, informed consent, confidentiality, privileged communication, and record keeping—ethical-legal concerns that cut across all of the school psychologist's many roles.

The remaining chapters focus on ethical-legal issues associated with specific roles. These chapters build on foundational knowledge of ethics and law presented in the first three chapters. [Chapters 4](#) and [5](#) address the delivery of services to students with disabilities. Psychoeducational assessment within the context of a school psychologist-client relationship is discussed in [Chapter 6](#). [Chapter 7](#) addresses academic and behavioral interventions within a multitiered system of service delivery and therapeutic interventions such as counseling. [Chapters 8](#) and [9](#) focus on indirect services. We discuss ethical-legal issues associated with consultative services to teachers and parents in [Chapter 8](#) and systems-level consultation in

[Chapter 9](#). A number of special consultation topics are covered in [Chapter 9](#), including the ethical-legal concerns associated with large-scale assessment programs (high-stakes testing, screening to identify students at risk for harm to self or others); instructional policies and practices (grade retention, instructional grouping, programs for English learners and gifted and talented students); school discipline; and discrimination, harassment, and bullying. In [Chapter 10](#), ethical-legal issues associated with research are discussed, and [Chapter 11](#) provides a brief overview of issues associated with school-based supervision of school psychologists in training. And, finally, in [Chapter 12](#), we discuss advocacy.

WHAT'S NOT IN THE BOOK

We have chosen to focus on ethical-legal issues of interest to current and future school-based practitioners. Consistent with this focus, we did not include a discussion of issues associated with private practice. Interested readers are encouraged to consult C. B. Fisher (2017) and Knapp et al. (2017). We also did not address the legal rights of psychologists as employees in the public schools. However, we did address situations in which the freedoms of ordinary citizens must be balanced with the school psychologist's professional roles and responsibilities.

EIGHTH EDITION REVISIONS

There have been a number of changes in ethical guidelines and law since we completed work on the seventh edition of this text. The National Association of School Psychologists (NASP) revised its professional standards, including the *Principles for Professional Ethics*, in 2020, and the American Psychological Association revised its ethics code,

Ethical Principles of Psychologists and Code of Conduct, in 2016 ([APA], 2017b). In the past several years, court rulings have provided new legal guidance on several issues of importance to school psychologists. For example, the US Supreme Court decision in *Endrew v. Douglas County School District* (2017) clarified interpretation of the meaning of *a free and appropriate education* under the Individuals with Disabilities Education Act as amended in 2004 (IDEA). The Supreme Court decision in *Fry v. Napoleon Community Schools* (2017) clarified that a student who has an individualized education program (IEP) under IDEA may have additional rights and protections under Americans with Disabilities Act as amended in 2008 that must be respected by the school.

The eighth edition of *Ethics and Law for School Psychologists* gives new attention to the ethical obligation to promote social justice. The problem-solving model that appeared in previous editions of the book was replaced by a new model developed by Diamond et al. (2021) that emphasizes socially just practice. Overall, the book has been updated to stress consideration of racial, ethnic, socioeconomic, and other background factors important to understanding the context and/or the individuals involved in ethically challenging situations (e.g., APA, 2017a), and practitioners are now more explicitly urged to examine their own biases and how those biases might affect their perception of a situation and professional judgment. [Chapter 8](#) now includes information about working with students who have undocumented family members and the educational rights of homeless schoolchildren. While all chapters were revised with an eye toward including relevant content on social justice, [Chapter 12](#) (new) now provides an expanded focus on advocacy.

The previous edition of *Ethics and Law for School Psychologists* included new material on ethical-legal

considerations associated with the use of digital technologies by school districts, school psychologists, and school children. Since that time, the Covid-19 pandemic along with the nationwide shortage of school psychologists have led to increased interest in distance assessment and intervention. As a result, multiple sections of the book were further updated to address ethical and legal concerns associated with distance delivery of school psychological services, including sections on distance assessment ([Chapter 6](#)), teleconsultation ([Chapter 8](#)), and telesupervision ([Chapter 11](#)).

Throughout the eighth edition, we incorporated citations to recent publications and legal decisions. However, we also continued to cite older works that provided the foundation for more recent scholarship in the area of ethics and law for school psychologists. As Koocher and Keith-Spiegel (2008) observed, ignoring important older publications on a topic is disrespectful of the efforts of early scholars. Furthermore, researchers and writers “who pass over earlier work may conclude that they discovered something fresh and innovative when in fact the same findings were published many years ago” (p. 524).

To assist the reader, a list of acronyms that are frequently used in this volume appears in Appendix E. An updated instructor’s manual with test questions and Microsoft PowerPoint slides are available for trainers who adopt the textbook. These supplements are available by contacting your John Wiley & Sons sales representative (visit <http://www.wiley.com>).

A number of the changes made in the eighth edition were suggested by readers. We welcome your suggestions for improving future editions of *Ethics and Law for School Psychologists*. Please contact Susan Jacob, Professor

Emeritus, Central Michigan University. E-mail:
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DISCLAIMERS

The portions of this book that address legal issues were written to provide the reader with a framework for understanding federal and state law pertinent to the delivery of school psychological services and a foundation for future learning in the area of legal issues. We hope that the material on legal issues will alert practitioners to professional practices that law deems appropriate or inappropriate (Sales et al., 2005); prompt them to seek consultation with knowledgeable supervisors when legal questions arise; and encourage thoughtful decisions that are respectful of student rights and decisions that, under public scrutiny, will foster trust in school psychologists. This book is not a legal text, and nothing in the book should be construed as legal advice. The court cases and judicial opinions summarized here were selected to provide a historical background for understanding legal issues in the field of school psychology, to illustrate terms and principles, to provide insight into contemporary interpretations of law pertinent to practice, or to serve as a cautionary tale regarding missteps to avoid in the delivery of services. Unlike a legal text, we do not provide a comprehensive set of citations to authoritative judicial decisions when legal issues are discussed in the book.

In addition, our interpretations of ethical codes and standards should not be viewed as reflecting the official opinion of any specific professional association.

NEW AUTHORS

When Susan Jacob and Tim Hartshorne published the first edition of *Ethics and Law for School Psychologists* in 1991, interest in ethical and legal issues associated with the field of school psychology was growing. However, while attorneys and others published on special education law, there were not many school psychologists publishing in the area of ethics. Today, it is exciting to see new scholars writing about ethics in school psychology, and especially social justice. With this edition, we begin a shift toward including some of those new voices as book and chapter authors. Elena Diamond, Associate Professor and Director of the School Psychology Program at Lewis & Clark College, joins us as a fourth author of the textbook. Dana E. Boccio, Associate Professor of Psychology at Adelphi University, provides her expertise in the new [Chapter 12](#) on advocacy. In addition, McKinzie Duesenberg, doctoral student at the University of Missouri, is an author of [Chapter 10](#) on ethical and legal issues associated with school-based research. It is hoped that this sets the stage for a new cohort of writers who, along with Dawn M. Decker and Elizabeth T. Lugg, can take lead roles in future revisions of this textbook. Our goal is to continue to produce a textbook that has a progression from basic concepts to more specific and complex content across chapters. We hope that this and future editions not only continue to have connectivity across chapters, but also emphasize the fresh and new ideas of younger scholars.

CAST OF CHARACTERS

Throughout the text, we have included a number of case incidents to illustrate specific principles. Some of the incidents are from case law, some were suggested by practitioners in the field, and others are fictitious. To make it easier for the reader to follow who's who in the vignettes,

we have used the same six school psychologists throughout the book:

MARIA DELGADO serves as a member of a school psychological services team in a medium-size city. She is particularly interested in school-based consultative services.

CARRIE JOHNSON provides school psychological services in a rural area. She faces the special challenges of coping with professional isolation and works in a community where resources are limited.

DAVID KIM is, at the beginning of the book, a doctoral intern in a suburban school district.

JAMES LEWIS, a school psychologist in a large metropolitan district, is a strong advocate of school efforts to prevent mental health problems.

PEARL MEADOWS is a school psychologist in a small university town. She works with a diverse student population, including students from farm families who live on the district's outskirts, Native American students from the neighboring Indian reservation, and children from many different cultures whose parents are part of the university community. Pearl also provides on-site supervision to school psychology interns.

WANDA ROSE provides services at the preschool and elementary levels in a small town. Children, babies, parents, and teachers love her. She has been a school psychology practitioner for many years. Wanda needs an occasional push from her colleagues to keep current with changing practices, however.

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Finally, a special thank you also is due to family members for their encouragement and patience during the completion of the book.

About the Companion Website

This book is accompanied by a companion website for instructors. www.wiley.com/go/jacob/ethicsandlaw8e

This website includes:

- Instructor's Manual and Test Banks
- PowerPoint Slides

Chapter 1

ETHICS IN SCHOOL PSYCHOLOGY: AN INTRODUCTION

Who are *school psychologists*? As Fagan (2014) observed, the term *school psychologist* has been defined in many different ways. For the purposes of this book, we adopted the definition developed by the National Association of School Psychologists (NASP). *School psychologists* are professionals who

apply expertise in mental health, learning, and behavior, to help children and youth succeed academically, socially, behaviorally, and emotionally. School psychologists partner with families, teachers, school administrators, and other professionals to create safe, healthy, and supportive learning environments that strengthen connections between home, school, and the community. (NASP, n.d.-a, p. 1)

As the decisions made by school psychologists have an impact on human lives, and thereby on society, the practice of school psychology rests on the public's trust. To build and maintain society's trust in school psychology, it is essential that every school psychologist is sensitive to the ethical and legal components of their work, knowledgeable regarding broad ethical principles and rules of professional conduct, and committed to a proactive stance in ethical thinking and conduct.

QUALITY CONTROL IN SCHOOL PSYCHOLOGY

Four sources of “quality control” protect the rights and welfare of students and other recipients of school psychological services. Professional codes of ethics for the delivery of psychological services are discussed in this chapter. [Chapter 2](#) provides an introduction to law that protects the rights of students and their parents in the school setting. Educational law provides a second source of quality control. [Chapter 2](#) also addresses the credentialing of school psychologists, a third mechanism of quality assurance. Credentialing helps to ensure that psychologists meet specified qualifications before they are granted a legal sanction to practice (Fagan & Wise, 2007). Graduate-program accreditation is an additional mechanism of quality control. Program accreditation helps to ensure the adequate preparation of school psychologists during their graduate coursework and field experiences.

This chapter focuses on the what and why of professional ethics, ethics education and competencies, and the codes of ethics of the NASP and the American Psychological Association (APA). Four broad ethical principles are introduced along with an ethical-legal decision-making model. We also describe ethics committees and sanctions for unethical conduct.

WHAT AND WHY OF PROFESSIONAL ETHICS

The term *ethics* generally refers to a system of principles of conduct that guide the behavior of an individual. *Ethics* derives from the Greek word *ethos*, meaning character or custom, and the phrase *ta ethika*, which Plato and Aristotle used to describe their studies of Greek values and ideals (Solomon, 1984). Accordingly,

ethics is first of all a concern for individual character, including what we call “being a good person,” but it is also a concern for the overall character of an entire society, which is still appropriately called its “ethos.” Ethics is participation in, and an understanding of, an ethos, the effort to understand the social rules which govern and limit our behavior. (p. 5)

A system of ethics develops in the context of a particular society or culture and is connected closely to social customs. Ethics is composed of a range of acceptable (or unacceptable) social and personal behaviors, from rules of etiquette to more basic rules of society. The terms *ethics* and *morality* are often used interchangeably. However, according to philosophers, the term *morality* refers to a subset of ethical rules of special importance. Solomon (1984) suggested that moral principles are “the most basic and inviolable rules of a society.” Moral rules are thought to differ from other aspects of ethics in that they are more important, fundamental, universal, rational, and objective (pp. 6–7). W. D. Ross (1930), a twentieth-century Scottish philosopher, identified a number of moral duties of the ethical person: *nonmaleficence*, *fidelity*, *beneficence*, *justice*, and *autonomy*. These moral principles have provided a foundation for the ethical codes of psychologists and other professionals (Bersoff & Koeppel, 1993).

Our focus here is on *applied* or *practical professional ethics*, the application of broad ethical principles and specific rules to the problems that arise in professional practice (Beauchamp & Childress, 2019). Applied ethics in school psychology is, thus, a combination of ethical principles and rules, ranging from more basic rules to rules of professional etiquette, that guide the conduct of the practitioner in their professional interactions with others. Furthermore, although school psychologists are employed

in a variety of settings, in this text we emphasize the special challenges of school-based practice.

Professionalism and Ethics

Professionalization has been described as:

the process by which an occupation, usually on the basis of a claim to special competence and a concern for the quality of its work and benefits to society, obtains the exclusive right to perform a particular kind of work, to control training criteria and access to the profession, and to determine and evaluate the way the work is to be performed. (Chalk et al., 1980, p. 3)

Professional associations or societies function to promote the profession by publicizing the services offered, safeguarding the rights of professionals, attaining benefits for its members, facilitating the exchange of and development of knowledge, and promoting standards to enhance the quality of professional work by its members (Chalk et al., 1980). Codes of ethics appear to develop out of the self-interests of the profession and a genuine commitment to protect the interests of persons served. Most professional associations have recognized the need to balance self-interests against concern for the welfare of the consumer. Ethical codes are one mechanism to help ensure that members of a profession will deal justly with the public (Bersoff & Koeppel, 1993).

However, the development of a code of ethics also serves to foster the profession's self-interests. A code of ethics is an indicator of the profession's willingness to accept responsibility for defining appropriate conduct and a commitment to self-regulation of members by the profession (Chalk et al., 1980). The adoption of a code of ethics often has been viewed as the hallmark of a profession's maturity. Ethical codes thus may serve to

enhance the prestige of a profession and reduce the perceived need for external regulation and control.

The field of psychology has a long-standing commitment to activities that support and encourage appropriate professional conduct. As will be seen in this chapter, both the NASP and the APA have developed and adopted codes of ethics. These codes are drafted by committees within professional organizations and reflect the beliefs of association members about what constitutes appropriate professional conduct. They serve to protect the public by sensitizing professionals to the ethical aspects of service delivery, educating practitioners about the parameters of appropriate conduct, and helping professionals to monitor their own behavior. Furthermore, because the codes of ethics of psychologists can now be accessed using the Internet, they also increasingly serve to educate the public and recipients of services about the parameters of expected professional conduct by school psychologists. Finally, professional codes of ethics also provide guidelines for adjudicating complaints (Behnke & Jones, 2012). By encouraging appropriate professional conduct, the NASP and the APA help to ensure that each person served will receive the highest quality of professional service. As a result, the public's trust in psychologists and psychology is enhanced and maintained.

Ethical Codes versus Ethical Conduct

Codes of ethics serve to protect the public. However, ethical conduct is not synonymous with simple conformity to a set of rules outlined in professional codes and standards (J. N. Hughes, 1986). As Kitchener (2000) and others (Bersoff, 1994; Welfel, 2012) have noted, codes of ethics are imperfect guides to behavior for several reasons. First, ethical codes in psychology are composed of broad, abstract principles along with a number of more specific

statements about appropriate professional conduct. They are at times vague and ambiguous (Bersoff, 1994).

Second, competing ethical principles often apply in a particular situation (Bersoff & Koepl, 1993; Haas & Malouf, 2005), and specific ethical guidelines may conflict with federal or state law (Koocher & Keith-Spiegel, 2016). In some situations, a primary or overriding consideration can be identified in choosing a course of action. In other situations, however, no one principle involved clearly outweighs the other(s) (Haas & Malouf, 2005). For example, the decision to allow a minor child the freedom to choose or refuse to participate in psychological services often involves a consideration of law, ethical principles (respect for autonomy and self-determination versus the welfare of the child), and the likely practical consequences of affording choices (enhanced treatment outcomes versus refusal of treatment).

A third reason ethical codes are imperfect is because they tend to be reactive. They frequently fail to address new and emerging ethical issues (Bersoff & Koepl, 1993; Welfel, 2012). Committees within professional associations often are formed to study the ways existing codes relate to emerging issues, and codes may be revised in response to new ethical concerns. Concern about the ethics of behavior modification techniques was a focus of the 1970s; in the 1980s, psychologists scrutinized the ethics of computerized psychodiagnostic assessment. In the 1990s, changes in codes of ethics reflected concerns about sexual harassment and fair treatment of individuals, regardless of their sexual orientation. In recent years, codes have emphasized the need for practitioner competence in the delivery of services to individuals from diverse experiential, linguistic, and cultural backgrounds. Codes also have been scrutinized to ensure relevance to the use of digital technologies.

Ethical codes thus provide guidance for the professional in their decision making. Ethical conduct, however, involves careful choices based on knowledge of broad ethical principles and code statements, ethical reasoning, and personal values. In many situations, more than one course of action is acceptable. In some situations, no course of action is completely satisfactory. In all situations, the responsibility for ethical conduct rests with the individual practitioner (Eberlein, 1987; Jacob et al., 2021).

ETHICS TRAINING AND COMPETENCIES

Prior to the late 1970s, many applied psychology graduate programs (clinical psychology, school psychology) required little formal coursework in professional ethics (Welfel, 2012). Ethics was often taught in the context of supervised practica and internship experiences, a practice Handelsman (1986) labeled “ethics training by ‘osmosis’” (p. 371). A shortcoming of this approach is that student learning is limited by supervisor awareness and knowledge of ethical-legal issues and the types of situations encountered in the course of supervision (Handelsman, 1986). Consensus now exists that ethics, legal aspects of practice, and a problem-solving model need to be explicitly taught during graduate training (Dailor & Jacob, 2010; Haas et al., 1986; Tymchuk, 1985). Both the NASP and the APA graduate program preparation standards require coursework in professional ethics. Furthermore, in *School Psychology: A Blueprint for Training and Practice* (Ysseldyke et al., 2006), prepared by a task force composed of leaders in the field, knowledge of the ethical and legal aspects of professional practice was identified as a foundational competency for school psychologists, one that permeates all aspects of the provision of services (also see

*NASP's Model for Comprehensive and Integrated School Psychological Services, 2020).*¹

In the 1980s, psychology trainers began to ask, “What should be the goals of ethics education in psychology?” (Haas et al., 1986; Kitchener, 1986); “What are the desired cognitive, affective, and behavioral ‘ethics competencies’ for school psychologists?” More recently, trainers have raised these questions: “How do school psychology students and practitioners gain competence, and ultimately expertise, in ethical decision making?” (Dailor & Jacob, 2010) “How do they gain a sense of themselves as ethical professionals?” (Handelsman et al., 2005, p. 59); and “How should ethics be taught?” A number of goals for ethics training have been suggested in the literature. An emerging picture of desired competencies includes these:

- Competent practitioners are sensitive to “the ethical components of their work” and are aware that their actions “have real ethical consequences that can potentially harm as well as help others” (Kitchener, 1986, p. 307; also Welfel & Kitchener, 1992).
- Competent psychologists have a sound working knowledge of the content of codes of ethics, professional standards, and law pertinent to the delivery of services (Fine & Ulrich, 1988; Welfel & Lipsitz, 1984).
- Competent practitioners are committed to a proactive rather than a reactive stance in ethical thinking and conduct (Tymchuk, 1986). They use their broad knowledge of codes of ethics and law along with ethical reasoning skills to anticipate and prevent problems from arising.
- Skilled practitioners are able to analyze the ethical dimensions of a situation and demonstrate a well-

developed “ability to reason about ethical issues” (Kitchener, 1986, p. 307). They have mastered and make use of a problem-solving model (Jacob et al., 2021; de las Fuentes & Willmuth, 2005; Tymchuk, 1981, 1986).

- Competent practitioners recognize that a system of ethical rules and ideals develops in the context of a specific culture, and they are sensitive to the ways their own values and standards for behavior may be similar to or different from those of individuals from other cultural groups. They “strive to understand the manner in which culture influences their own view of others and other’s view of them” (Ortiz et al., 2008, p. 1721; also APA, 2017a; K. Kelly et al., 2019).
- Competent psychologists are aware of their own feelings and beliefs. They recognize that personal feelings, beliefs, and values influence professional decision making (Knapp, Gottlieb et al., 2017; Koocher & Keith-Spiegel, 2016).
- Competent practitioners do their best to engage in *positive ethics*; that is, they strive for excellence rather than meeting minimal obligations outlined in codes of ethics and law (Knapp, VandeCreek et al., 2017).
- Competent practitioners appreciate the complexity of ethical decisions and are tolerant of ambiguity and uncertainty. They acknowledge and accept that there may be more than one appropriate course of action (de las Fuentes & Willmuth, 2005; Kitchener, 2000).
- Competent practitioners have the personal strength to act on decisions made and accept responsibility for their actions (de las Fuentes & Willmuth, 2005; Kitchener, 1986).