

CHAPTER 3

Laws, Ethical Codes, and Professional Standards That Impact Assessment

LEARNING OBJECTIVES

- 3-1 Articulate the major laws that affect assessment, and the specific provisions (for example, individualized education program, least restrictive environment, and due process) of the laws.
- 3-2 Describe broad ethical principles and standards for assessment that have been developed by professional association, and a process for addressing situations in which the most ethical approach is ambiguous.
- 3-3 Explain how test standards promote the development of tests with greater technical adequacy.

CHAPTER OUTLINE

- 3-1 Laws
 - 3-1a Section 504 of the Rehabilitation Act of 1973
 - 3-1b Major Assessment Provisions of the Individuals with Disabilities Education Improvement Act
 - 3-1c The No Child Left Behind Act of 2001
 - 3-1d 2004 Reauthorization of IDEA
 - 3-1e Americans with Disabilities Act of 1990 (ADA)
 - 3-1f Americans with Disabilities Act Amendments of 2008 (ADAA)
 - 3-1g Family Educational Rights and Privacy Act Of 1974 (FERPA)
- 3-2 Ethical Considerations
 - 3-2a Four Broad Ethical Principles
- 3-3 Test Standards

OVERVIEW

Much of current practice in assessment of students is the result of legislation, court cases, and professional standards and ethics. Prior to 1975, there were no federal laws requiring students with disabilities to attend school or schools to educate students with disabilities. Since that time, federal laws have addressed these issues, providing students with disabilities access to education and services and holding schools accountable for their progress.

Descriptions of major federal laws which have had important effects on assessment practices are found below.

Section 504 of the Rehabilitation Act of 1973 prohibited any program receiving federal assistance (including public schools) from discriminating against people with disabilities. This act has been expanded and is used in court cases to get services for students with conditions not formally listed in other legislation.

The **Education for All Handicapped Children Act (Public Law 94-142)**, enacted in 1975, has had a profound effect on the practice of special education and assessment. The four major provisions of this law are as follows:

- an individualized education program (IEP) for each student with a disability
- protection in evaluation procedures (PEP) to ensure a fair assessment
- education in the least restrictive environment (LRE)
- due process in decision making

The **2001 Elementary and Secondary Education Act (No Child Left Behind Act or NCLB)** specified that all children (including students with disabilities) must be tested in grades 3–8 every year to ensure proficiency by grade 12, with a major emphasis on students reading proficiently by the end of third grade. In addition, the law also provided increased flexibility and local control, expanded parent educational options, and specified the use of evidence-based instructional methods in schools.

The **2004 Reauthorization of IDEA** removed the requirement that students must have a severe discrepancy between ability and achievement in eligibility decisions for services for learning disabilities, and states may choose to incorporate data on student responsiveness to intervention.

The **Americans with Disabilities Act of 1990** expanded the definition of handicap and requires that people with disabilities have access and necessary accommodations so they can participate in a variety of services and events. The **Americans with Disabilities Act Amendments of 2008** specifically clarified the criteria for making decisions about eligibility for entitlements such as special education services.

Enacted in 1974, the **Family Educational Rights and Privacy Act (FERPA)** governs the collection, maintenance, and dissemination of student records. The two major provisions of the law are that 1) any educational agency accepting federal money must grant parents the opportunity to inspect and challenge student records, and 2) educational agencies must not release identifiable data without parents' written consent.

In addition to the laws and court cases that guide assessment practices, many professional associations have developed ethical standards to guide the practice of their members, and several of the standards are related directly to assessment practices. The chapter provides broad ethical principles taken from professional associations, including the American Psychological Association, the National Association of School Psychologists, and the National Education Association, to guide educational and psychological testing practices. The important ethical considerations that are highlighted in the chapter are the following:

- Respect for the dignity of persons – This includes respecting a student's right to privacy and confidentiality.
- Professional competence and responsibility – This consideration centers around beneficence, or seeking to do what is in the best interest of students. Professionals recognize that assessment can have significant social and educational consequences for students, and they take responsibility for the consequences of their work.
- Honesty and integrity in professional relationships – Professionals must recognize the boundaries of their competence. This includes recognizing one's own limitations as well as the limitations of the techniques used. In addition, it is important for professionals to demonstrate competence in working with students from diverse backgrounds.

- Responsibility to schools, families, communities, one's profession, and society – Professionals must behave professionally. Additionally, professionals must protect the rights of students and particularly students with disabilities, as they are among the most vulnerable members of society. Students also have the right to be assessed in a fair and nondiscriminatory way.

KEY TERMS AND CONCEPTS

The following key terms and concepts are the most important in Chapter 3. Students should be able to define and explain each of them.

<i>Term/Concept</i>	<i>Primary Points in Definition/Explanation</i>
American Psychological Association's (2002) Code of Conduct for Psychologists	Document provided by the American Psychological Association which provides ethical standards and guidelines to members.
American Psychological Association's (2002) Ethical Principles of Psychologists	Document provided by the American Psychological Association which provides ethical standards and guidelines to members.
Americans with Disabilities Act (ADA)	Guarantees equal opportunity to individuals with disabilities in employment, public services, transportation, state and local government services, and telecommunications.
Americans with Disabilities Act Amendments of 2008 (ADAA)	Further defines and clarifies criteria necessary for determining whether a student has a disability under ADA and Section 504.
beneficence	Ethical guideline which specifies that professionals make decisions and act in ways which will result in maximized benefits for students and at least do no harm.
Common Core State Standards	A set of curricular standards established through state and federal regulations that all students are expected to meet.
due process	Assurances that parents can inspect school records, challenge the material in the records, and have their child independently evaluated. Parents must receive written notification before evaluation that might result in changes in placement. Parents must be given the opportunity to be heard and the right to have an impartial due-process hearing to resolve conflicting opinions
Education for All Handicapped Children	Also known as Public Law 94-142, this act

Act	guaranteed special education services to students with disabilities. It included four major provisions regarding assessment: 1) individualized education program for each student with a disability, 2) protection in evaluation procedures, 3) education in the least restrictive appropriate environment, and 4) due process rights.
evidence-based instructional methods	Teaching methods that are proven to work. Required by NCLB and IDEA.
individualized education plan (IEP)	Assurance that for each child with a disability, an IEP must be formulated by a multidisciplinary team with the parents and based on comprehensive assessment; it must specify long-term and short-term goals, plans for implementing the instructional program, and how and when progress will be evaluated
Individuals with Disabilities Education Act	<p>A reauthorization of Public Law 94-142, the Education of All Handicapped Children Act (EHA); In 1990, the new provisions in the law were the addition of two new categories (autism and traumatic brain injury) and the requirement that transition plans and services be developed for students with disabilities age 16 years and older</p> <p>IDEA was most recently reauthorized in 2004 as the Individuals with Disabilities Education Improvement Act. It removed the requirement of an ability/achievement discrepancy for learning disability eligibility decisions and encouraged use of responsiveness to intervention data. In addition, it set specific regulations on special education teacher qualifications.</p>
least restrictive environment (LRE)	Assurances that to the maximum extent appropriate, children with disabilities are to be educated with children who are not disabled
National Association of School Psychologists' (2010) <i>Principles for Professional Ethics</i>	Document provided by the National Association of School Psychologists which provides ethical standards and guidelines to members.
National Education Association's <i>Code of Ethics of the Education Profession</i>	Document provided by the National Education Association which provides ethical standards

	and guidelines to members.
No Child Left Behind Act (NCLB)	Reform of the Elementary and Secondary Education Act; required greater accountability by testing all students every year in grades 3–8, with a strong emphasis on each child reading by the end of third grade; also allowed increased local control by states, expanded options of enrolling in other public schools, and use of evidence-based instructional methods
Race to the Top	Federal program that has granted funds to two consortia of states for the development of common assessments that measure student achievement against standards that represent what is needed to be successful in the workplace and college.
Section 504 of the Rehabilitation Act of 1973	This law prohibits any program that is receiving federal assistance from discriminating against people with disabilities; Section 504 is still cited to obtain services for students with conditions not formally listed in later legislation
<i>Standards for Educational and Psychological Testing</i>	Created jointly by the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education, this document provides a set of standards for test development and use.

IN-CLASS/ONLINE ACTIVITIES

1. Obtain an individualized education plan (IEP). Evaluate the document for each of the specifics mentioned in Public Law 94-142. Note the format and the completeness of each portion. Is the IEP computer generated? Write or discuss your reactions.
2. Go to the U.S. Department of Education website. Can you locate information about the most recent amendments to IDEA and the Elementary and Secondary Education Act (No Child Left Behind)? Report what you find.
3. Download NASP's (2010) *Principles for Professional Ethics* and APA's (2002) *Ethical Principles of Psychologists*. Compare and contrast the contents of these two documents.

DISCUSSION QUESTIONS

1. What three major laws that affect assessment practices?

The three major laws which affect assessment practices are 1) Section 504 of the Rehabilitation Act of 1973, 2) the Individuals with Disabilities Education Improvement Act (i.e., 2004 Reauthorization of IDEA), and 3) the 2001 Elementary and Secondary Education Act (i.e., No Child Left Behind).

2. How do the major components of IDEA (individualized educational plan, least restrictive environment, protection in evaluation procedures, and due process) affect assessment practices?

- IDEA mandates that schools must provide an *individualized educational plan* (IEP) for each student with a disability. An IEP should be based on a comprehensive assessment by a multidisciplinary team which informs the short-term and long-term goals and objectives as well as the most appropriate instructional program. In addition, the law specifies that students with disabilities are to be included in state and district-wide assessments. The IEP team decides whether the student will take the assessments with accommodations, without accommodations, or an alternate or modified assessment.
- The *protection in evaluation procedures* provision protects students from biased and discriminatory assessment. They provide for assessment procedures which are fair, equitable, thorough, and nondiscriminatory.
- The *least restrictive environment* provides that “to the maximum extent appropriate, handicapped children...are educated with children who are not handicapped...removal of handicapped children from the regular educational environment occurs only when the nature or the severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” Assessment practices should inform the intensity of supports that a student needs in order to receive an appropriate education.
- *Due process* provides protections for parents and students as it relates to assessment and educational placement decisions. For example, parents have the right to inspect their child's records, have the evaluation results of an independent third party considered, and receive written notification before an evaluation is begun which might result in a placement change for their child.

3. Special education is a field of acronyms. SWD are entitled to services under IDEA; others, who are labeled ADHD, are not eligible for services under IDEA, but once received services under ADA and are now eligible under ADAA/504. Because of NCLB, Title I students are eligible for services. Students with disabilities are put on an IEP, but school personnel do not have to write one for SW/OD. Students with disabilities are entitled to a FAPE, PEP, and education in the LRE. Translate these sentences in a way that your mother grandmother could understand.

Responses may vary, but should translate and/or explain all acronyms. Following is an example:

Students with disabilities are entitled to special education services under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA). However, other students (such as those with attention deficit disorder with hyperactivity) are not eligible for special education services under IDEA. These students once received services through the Americans with Disabilities Act of 1990 (ADA), and they are now eligible under the 2008 Americans with

Disabilities Act Amendments (ADAA) as well as Section 504 of the Rehabilitation Act of 1973. Because of the No Child Left Behind Act of 2001, students can receive services from other sources such as Title 1 (which provides educational services for disadvantaged students).

Students with disabilities are put on an individualized education plan (IEP), which describes their special education services, but school personnel do not have to write one for students with other disabilities not covered in IDEA. Students with disabilities are entitled to a free and appropriate public education, protection in evaluation procedures, and education in the least restrictive environment.

- 4. Identify the ethical principles that you believe should guide the behavior of individuals in two of the following professions: plumber, stockbroker, grocery store manager, used car salesman, physician, bartender, and professor. Then write a brief paragraph on why you selected the principles and how they differ for different professions. Are there commonalities?**

Answers will vary but will likely include principles similar to those described in the chapter: respect, honesty, integrity, responsibility, and acting within one's competence.

- 5. How do the broad ethical principles of beneficence, competence boundaries, respect for the dignity of persons, confidentiality, and fairness affect assessment practices?**
- *Beneficence* is important because it means that educational professionals act in a way that maximizes the benefit to students. Assessment information is used to make decisions which can significantly affect the lives of students. Assessment information should be collected and used in a way that contributes to the quality of life for the student, family, school, and/or community.
 - *Recognizing the boundaries of one's competence* is important because assessors and instruments both have limitations that can adversely affect assessment and, as a result, the decisions that are made.
 - *Respect for the dignity of persons* is important because assessors must recognize that students and their families have the right to participate in decisions that affect a student's welfare and share their thoughts, feelings, behaviors.
 - *Confidentiality of information* is important because it is expected by those assessed or by those who gave permission for assessment that information will be held in strict confidence.
 - *Fairness* is important because it is expected that those who assess students will select tests that are fair, non-biased, and valid.

- 4. What are the two practices in which you can engage to support the development of technically adequate tests?**

You can behave in accordance with the *Standards for Educational and Psychological Testing*. You can refuse to use technically inadequate tests

FIELD EXPERIENCES

1. Visit various education settings (regular classrooms, resource rooms, self-contained special education classrooms, special schools). Write or discuss how each setting can be described as a least restrictive environment.
2. Interview a school psychologist. Ask the school psychologist about how legislation affects his/her assessment practices. What ethical principles are most apparent in his/her daily work?
3. Interview two people to get their perspectives on No Child Left Behind and Common Core standards. Select the people you interview from among the following, or choose others who you think might have a different perspective: teacher, school psychologist, principal or other school administrator. Compare and contrast their understanding of the purposes of law and standards. To what extent do their perspectives correspond to their professional or personal roles? Then, with a classmate who has completed this activity, compare and contrast the perspectives.

VIDEO ACTIVITIES

1. Watch this video <http://www.wrightslaw.com/lawschool/Watkins.wmv>. Answer the following question: What did you learn from this video about least restrictive environment?
2. Watch this video: <https://www.youtube.com/watch?v=SsVimwm6xQ4>. Answer the following questions: What did Barack Obama say about how he would change No Child Left Behind when he was a presidential candidate? Have any of these changes been implemented with the most recent legislation?