

SHHH....IT'S NOT THAT SECRET!

***THE ETHICS OF CONFIDENTIALITY
IN SCHOOL PSYCHOLOGY
PRACTICE, 2024 EDITION***



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Ohio School Psychologists Association (OSPA) Ethics Training – Fall 2024 Conference
Wednesday, November 6, 2024
5:00pm – 7:00pm | 2.00 Hours Contact Time in Ethics

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MORE FINE PRINT: CONFLICT OF INTEREST STATEMENT



"What conflict of interest?!
I work here in my spare time."



Commercial Interest: The presenter today is offering this course as a professional development session on behalf of OSPA's 2024 fall conference. There is a commercial interest to Dr. Merkle as a paid professional development trainer on behalf of OSPA and within his personal professional development sessions.



Financial Relationships: Dr. Merkle is compensated for today's training session in partnership with OSPA.



Conflict of Interest: OSPA is the professional association of Ohio school psychology. Today's content does not represent the official position of OSPA or various governmental entities mentioned therein. The presenter is solely responsible for its content and materials.



Relevant Financial Relationships: Dr. Merkle will receive residual compensation for subsequent redistribution of today's webinar session and other venues where he may be invited to present.

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DESCRIPTION OF TODAY'S SESSION



- Confidentiality in school psychology practice reflects a complex intersection of multiple federal statutes, state occupational licensure requirements, and ethical demands. School psychologists oftentimes have to navigate these challenging expectations while also simultaneously navigating multiple systems.
- Attendees will learn about salient areas of confidentiality across IDEIA, HIPAA, FERPA, Ohio's Operating Standards, and how these and many more influence our roles and function.

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LEARNING OBJECTIVES



1. Attendees will identify at least 10 cardinal features of applicable federal confidentiality statutes and their nexus to Ohio practice laws and school psychology ethics.
2. Participants will contrast divergent expectations of confidentiality within FERPA and HIPAA when collaborating between educational and medical/behavioral health settings.
3. Learners will establish a basic confidentiality packet of relevant forms for daily practice.
4. Participants will maintain a composite list of confidential guidance documents from definitive sources to support daily practice.

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TODAY'S TRAINING AGENDA

1. Ethical Principals & Standards
 1. APA
 2. NASP
 3. Ethical Problem Solving Sequence

2. Statutory Obligations:
 1. FERPA
 2. IDEIA
 3. State Board of Psychology
 4. State Board of Education: Professional Conduct
 5. Ohio Operating Standards
 6. Ohio SB 29

3. Your Local Board of Education Adopted Policies

4. Handling Sensitive Information & Gossip

5. Wrapping Up & Questions/Answers

- **“Ethics training is not over when a degree or license is granted”** (Bashe, Anderson, Handelsman, 2007, p. 61)



PROFESSIONAL ETHICAL PRINCIPALS & STANDARDS: APA

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APA ETHICAL PRINCIPLES OF PSYCHOLOGISTS & CODE OF CONDUCT (2003, 2010, 2016 AMENDMENTS)

- **Components**
 - Introduction

 - Preamble

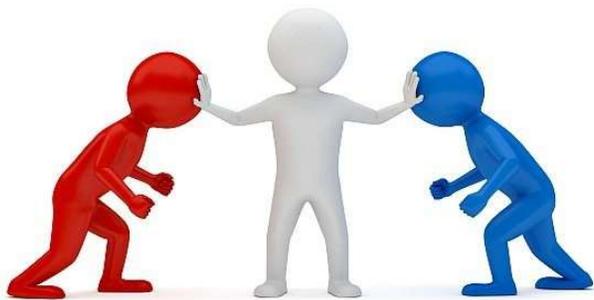
 - 5 General Principles
 - Principle A: Beneficence & Nonmaleficence
 - Principle B: Fidelity & Responsibility
 - Principle C: Integrity
 - Principle D: Justice
 - Principle E: Respect for People's Rights & Dignity

 - Specific Ethical Standards

CONFIDENTIALITY IN APA CODE OF CONDUCT – GENERAL PRINCIPLES



- Principle E
 - Psychologists respect the dignity and worth of all people, and the rights of individuals to privacy, confidentiality, and self-determination.



CONFLICTS W/LAW, REGULATIONS, OTHER GOVERNING LEGAL AUTHORITY

- 1.02
 - If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists clarify the nature of the conflict, make known their commitment to the Ethics Code, and take reasonable steps to resolve the conflict consistent with the General Principles and Ethical Standards of the Ethics Code. Under no circumstances may this standard be used to justify or defend violating human rights.



CONFLICTS W/ETHICS & ORGANIZATIONAL DEMANDS

- 1.03
 - If the demands of an organization with which psychologists are affiliated or for whom they are working are in conflict with this Ethics Code, psychologists clarify the nature of the conflict, make known their commitment to the Ethics Code, and take reasonable steps to resolve the conflict consistent with the General Principles and Ethical Standards of the Ethics Code. Under no circumstances may this standard be used to justify or defend violating human rights.

INFORMAL RESOLUTION OF ETHICAL VIOLATIONS

- **1.04 Informal Resolution of Ethical Violations**

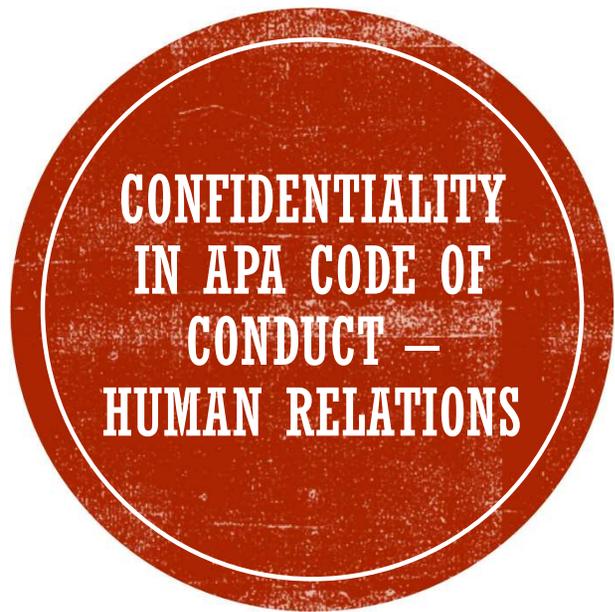
When psychologists believe that there may have been an ethical violation by another psychologist, they attempt to resolve the issue by bringing it to the attention of that individual, if an informal resolution appears appropriate and the intervention does not violate any confidentiality rights that may be involved.



CONFIDENTIALITY IN APA CODE OF CONDUCT — HUMAN RELATIONS

- 3.05 Multiple Relations
 - When psychologists are required by law, institutional policy, or extraordinary circumstances to serve in more than one role in judicial or administrative proceedings, at the outset they clarify role expectations and the extent of confidentiality and thereafter as changes occur. (See also Standards [3.04, Avoiding Harm](#) , and [3.07, Third-Party Requests for Services](#) .)
- 3.07 Third-Party Requests for Services
 - When psychologists agree to provide services to a person or entity at the request of a third party, psychologists attempt to clarify at the outset of the service the nature of the relationship with all individuals or organizations involved. This clarification includes the role of the psychologist (e.g., therapist, consultant, diagnostician, or expert witness), an identification of who is the client, the probable uses of the services provided or the information obtained, and the fact that there may be limits to confidentiality. (See also Standards [3.05, Multiple relationships](#) , and 4.02, Discussing the Limits of Confidentiality.)





- **3.10 (c)**
 - When psychological services are court ordered or otherwise mandated, psychologists inform the individual of the nature of the anticipated services, including whether the services are court ordered or mandated and any limits of confidentiality, before proceeding.

- **3.11**
 - (a) Psychologists delivering services to or through organizations provide information beforehand to clients and when appropriate those directly affected by the services about (1) the nature and objectives of the services, (2) the intended recipients, (3) which of the individuals are clients, (4) the relationship the psychologist will have with each person and the organization, (5) the probable uses of services provided and information obtained, (6) who will have access to the information, and (7) limits of confidentiality. As soon as feasible, they provide information about the results and conclusions of such services to appropriate persons.

CONFIDENTIALITY IN APA CODE OF CONDUCT – PRIVACY & CONFIDENTIALITY

▪ 4.01

- Psychologists have a primary obligation and take reasonable precautions to protect confidential information obtained through or stored in any medium, recognizing that the extent and limits of confidentiality may be regulated by law or established by institutional rules or professional or scientific relationship. (See also Standard [2.05, Delegation of Work to Others](#) .)

▪ 4.02

- (a) Psychologists discuss with persons (including, to the extent feasible, persons who are legally incapable of giving informed consent and their legal representatives) and organizations with whom they establish a scientific or professional relationship (1) the relevant limits of confidentiality and (2) the foreseeable uses of the information generated through their psychological activities. (See also Standard [3.10, Informed Consent](#) .)
- (b) Unless it is not feasible or is contraindicated, the discussion of confidentiality occurs at the outset of the relationship and thereafter as new circumstances may warrant.
- (c) Psychologists who offer services, products, or information via electronic transmission inform clients/patients of the risks to privacy and limits of confidentiality.

CONFIDENTIALITY IN APA CODE OF CONDUCT – PRIVACY & CONFIDENTIALITY

- **4.04 (b)**

- (b) Psychologists discuss confidential information obtained in their work only for appropriate scientific or professional purposes and only with persons clearly concerned with such matters.

- **4.05 Disclosures**

- (a) Psychologists may disclose confidential information with the appropriate consent of the organizational client, the individual client/patient, or another legally authorized person on behalf of the client/patient unless prohibited by law.
- (b) Psychologists disclose confidential information without the consent of the individual only as mandated by law, or where permitted by law for a valid purpose such as to (1) provide needed professional services; (2) obtain appropriate professional consultations; (3) protect the client/patient, psychologist, or others from harm; or (4) obtain payment for services from a client/patient, in which instance disclosure is limited to the minimum that is necessary to achieve the purpose. (See also Standard [6.04e, Fees and Financial Arrangements](#) .)

CONFIDENTIALITY IN APA CODE OF CONDUCT – PRIVACY & CONFIDENTIALITY

- **4.06 Consultations**

- When consulting with colleagues, (1) psychologists do not disclose confidential information that reasonably could lead to the identification of a client/patient, research participant, or other person or organization with whom they have a confidential relationship unless they have obtained the prior consent of the person or organization or the disclosure cannot be avoided, and (2) they disclose information only to the extent necessary to achieve the purposes of the consultation. (See also Standard [4.01, Maintaining Confidentiality](#) .)

- **4.07 Use of Confidential Information for Didactic or Other Purposes**

- Psychologists do not disclose in their writings, lectures, or other public media, confidential, personally identifiable information concerning their clients/patients, students, research participants, organizational clients, or other recipients of their services that they obtained during the course of their work, unless (1) they take reasonable steps to disguise the person or organization, (2) the person or organization has consented in writing, or (3) there is legal authorization for doing so.

CONFIDENTIALITY IN APA CODE OF CONDUCT – RECORD KEEPING & FEES

- **6.02 Maintenance, Dissemination, and Disposal of Confidential Records of Professional and Scientific Work**

(a) Psychologists maintain confidentiality in creating, storing, accessing, transferring, and disposing of records under their control, whether these are written, automated, or in any other medium. (See also Standards [4.01, Maintaining Confidentiality](#) , and [6.01, Documentation of Professional and Scientific Work and Maintenance of Records](#) .)

- (b) If confidential information concerning recipients of psychological services is entered into databases or systems of records available to persons whose access has not been consented to by the recipient, psychologists use coding or other techniques to avoid the inclusion of personal identifiers.
- (c) Psychologists make plans in advance to facilitate the appropriate transfer and to protect the confidentiality of records and data in the event of psychologists' withdrawal from positions or practice. (See also Standards [3.12, Interruption of Psychological Services](#) , and [10.09, Interruption of Therapy](#) .)

CONFIDENTIALITY IN APA CODE OF CONDUCT – RESEARCH & PUBLICATION

- **8.02 Informed Consent to Research**

- (a) When obtaining informed consent as required in Standard 3.10, Informed Consent, psychologists inform participants about (1) the purpose of the research, expected duration, and procedures; (2) their right to decline to participate and to withdraw from the research once participation has begun; (3) the foreseeable consequences of declining or withdrawing; (4) reasonably foreseeable factors that may be expected to influence their willingness to participate such as potential risks, discomfort, or adverse effects; (5) any prospective research benefits; (6) limits of confidentiality; (7) incentives for participation; and (8) whom to contact for questions about the research and research participants' rights. They provide opportunity for the prospective participants to ask questions and receive answers. (See also Standards [8.03, Informed Consent for Recording Voices and Images in Research](#) ; [8.05, Dispensing with Informed Consent for Research](#) ; and [8.07, Deception in Research](#) .)

CONFIDENTIALITY IN APA CODE OF CONDUCT – RESEARCH & PUBLICATION

- **8.05 Dispensing with Informed Consent for Research**

- Psychologists may dispense with informed consent only (1) where research would not reasonably be assumed to create distress or harm and involves (a) the study of normal educational practices, curricula, or classroom management methods conducted in educational settings; (b) only anonymous questionnaires, naturalistic observations, or archival research for which disclosure of responses would not place participants at risk of criminal or civil liability or damage their financial standing, employability, or reputation, and confidentiality is protected; or (c) the study of factors related to job or organization effectiveness conducted in organizational settings for which there is no risk to participants' employability, and confidentiality is protected or (2) where otherwise permitted by law or federal or institutional regulations.

- **8.14 Research Data for Verification**

- (a) After research results are published, psychologists do not withhold the data on which their conclusions are based from other competent professionals who seek to verify the substantive claims through reanalysis and who intend to use such data only for that purpose, provided that the confidentiality of the participants can be protected and unless legal rights concerning proprietary data preclude their release.

- **8.15 Reviewers**

- Psychologists who review material submitted for presentation, publication, grant, or research proposal review respect the confidentiality of and the proprietary rights in such information of those who submitted it.

CONFIDENTIALITY IN APA CODE OF CONDUCT – ASSESSMENT

- **9.03 Informed Consent in Assessments**

- ...**(A)**Informed consent includes an explanation of the nature and purpose of the assessment, fees, involvement of third parties, and limits of confidentiality and sufficient opportunity for the client/patient to ask questions and receive answers.
- **(C)** Psychologists using the services of an interpreter obtain informed consent from the client/patient to use that interpreter, ensure that confidentiality of test results and test security are maintained, and include in their recommendations, reports, and diagnostic or evaluative statements, including forensic testimony, discussion of any limitations on the data obtained.

- **9.04 Release of Test Data**

- Psychologists may refrain from releasing test data to protect a client/patient or others from substantial harm or misuse or misrepresentation of the data or the test, recognizing that in many instances release of confidential information under these circumstances is regulated by law.

CONFIDENTIALITY IN APA CODE OF CONDUCT – THERAPY

- **10.01 Informed Consent to Therapy**

(a) When obtaining informed consent to therapy as required in Standard [3.10, Informed Consent](#) , psychologists inform clients/patients as early as is feasible in the therapeutic relationship about the nature and anticipated course of therapy, fees, involvement of third parties, and limits of confidentiality and provide sufficient opportunity for the client/patient to ask questions and receive answers.

- **10.03 Group Therapy**

When psychologists provide services to several persons in a group setting, they describe at the outset the roles and responsibilities of all parties and the limits of confidentiality.



PROFESSIONAL ETHICAL PRINCIPALS & STANDARDS: NASP

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NASP PROFESSIONAL ETHICS OVERVIEW

- May 202, NASP Leadership Assembly, 80 leaders approved NASP 2020 Professional Standards
 - Model for Comprehensive & Integrated School Psychological Services (NASP Practice Model)
 - Standards for Graduate Preparation of School Psychologists
 - Standards for the Credentialing of School Psychologists
 - Principles for Professional Ethics



NASP PRACTICE MODEL

DOMAIN 10: LEGAL, ETHICAL, AND PROFESSIONAL PRACTICE

- School psychologists access, evaluate, and use information sources and technology in ways that safeguard and enhance the quality of services, security of confidential information, and responsible record keeping.

ORGANIZATIONAL PRINCIPLE 3: PHYSICAL, PERSONNEL, AND FISCAL SUPPORT SYSTEMS

- 3.4. School systems provide school psychologists with access to appropriate professional work materials, sufficient office and work space, adequate technology and clerical support, and general working conditions that enhance the delivery of effective services and ensure confidentiality. Included are assessment and intervention materials, access to private telephone and office, therapeutic aids, and access to professional literature



PRINCIPLE 4: PROFESSIONAL COMMUNICATION

- 4.3
 - School systems ensure that staff members have access to the technology necessary to perform their jobs adequately and to maintain appropriate and confidential communication with students, families, and service providers within and outside the system.

- 4.4
 - The school system's policy on student records is consistent with state and federal laws and regulations and ensures the protection of the confidentiality of students and their families...Although test protocols are part of the student's record, the school system ensures that test security is protected and copyright restrictions are observed. Release of records and protocols is consistent with state and federal regulations. The policy on student records includes procedures for maintaining student confidentiality and privacy in the use of electronic communications.

PRINCIPLES FOR PROFESSIONAL ETHICS

1	Respecting dignity and rights of all persons
2	Professional competence & responsibility
3	Honesty & integrity in professional relationships
4	Responsibility to schools, families, communities, the profession, and society

STANDARD 1.1.3 SEEKING INFORMED CONSENT

- School psychologists ensure that an individual providing consent for school psychological services is fully informed about the nature and scope of services offered, assessment/intervention goals and procedures, anyforeseeable risks, the cost of services to the parent or student (if any), and the benefits that reasonably can be expected. The explanation includes discussion of the limits of confidentiality, who will receive information about assessment or intervention outcomes, and the possible consequences of the assessment/intervention services being offered. Available alternative services are identified, if appropriate. This explanation of informed consent takes into account language and cultural differences, cognitive capabilities, developmental level, age, and other relevant factors so that it may be understood by the individual providing consent. School psychologists appropriately document written or oral consent. Any service provision by interns, practicum students, or other trainees is explained and agreed to in advance, and the i

STANDARD 1.2.2 BOUNDARIES OF CONFIDENTIALITY

- School psychologists inform students 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 or adolescent is in immediate need of assistance, it is permissible to delay the discussion of confidentiality until the immediate crisis is resolved.

STANDARD 1.2.3 CONSENT FOR DISCLOSURE OF INFORMATION

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, legal guardian, or of an adult student, except in those situations in which failure to release information could result in danger to the student or others, or where otherwise required by law.



Whenever feasible, the student's assent is obtained prior to disclosure of their confidences to third parties, including disclosures to the student's parents. When seeking consultation about a student or other client in a nonprivate forum (e.g., online discussion group), school psychologists ensure that the information they disclose is not sufficient to result in discovery of the client's identity

STANDARD 1.2.4 NEED TO KNOW

- **School psychologists discuss and/or release confidential information only for professional purposes and only with persons who have a legitimate need to know. They do so within the strict boundaries of relevant privacy statutes.**

STANDARD I.2.5 PRIVACY RELATED TO SEXUAL ORIENTATION AND GENDER IDENTITY AND EXPRESSION

- School psychologists respect the right of privacy of students, parents, and colleagues with regard to sexual orientation, gender identity, or transgender status. They do not share information about the sexual orientation, gender identity, or transgender status of a student (including minors), parent, or school employee with anyone without that individual's permission.

STANDARD 1.2.6 PRIVACY OF HEALTH INFORMATION

- School psychologists respect the right of privacy of students, their parents and other family members, and colleagues with regard to sensitive health information (e.g., presence of a communicable disease). They do not share sensitive health information about a student, parent, or school employee with others without that individual's permission (or the permission of a parent or guardian in the case of a minor). School psychologists consult their state laws and department of public health for guidance if they believe a client poses a health risk to others.

STANDARD IV.5.2 PROTECTING THE RIGHTS OF RESEARCH PARTICIPANTS

- IV.5.2b In planning research, school psychologists are ethically obligated to consider carefully whether the informed consent of research participants is needed for their study, recognizing that research involving more than minimum risk requires informed consent, and that research with students involving activities that are not part of ordinary, typical schooling requires informed consent. Consent and assent protocols provide the information necessary for potential research participants to make an informed and voluntary choice about participation. School psychologists evaluate the potential risks (including risks of physical or psychological harm, intrusions on privacy, breach of confidentiality) and benefits of their research and only conduct studies in which the risks to participants are minimized and acceptable.

STANDARD IV.5.5 REPLICABILITY OF DATA

- School psychologists make available their data or other information that provided the basis for findings and conclusions reported in publications and presentations, if such data are needed to address a legitimate concern or need and under the condition that the confidentiality and other rights of research participants are protected.

STANDARD IV.5.10 REVIEW OF MANUSCRIPTS AND PROPOSALS

- School psychologists who participate in reviews of manuscripts, proposals, and other materials respect the confidentiality and proprietary rights of the authors. They limit their use of the materials to the activities relevant to the purposes of the professional review. School psychologists who review professional materials do not communicate the identity of the author, quote from the materials, or duplicate or circulate copies of the materials without the author's permission.



RESOLVING ETHICALLY CHALLENGING SITUATIONS

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SYSTEMATIC PROBLEM SOLVING MODEL

Methodical, multistep procedure → decisions rooted in critical-evaluative thinking, logic, and rationality

Ethical Problem-Solving Model (Armistead, Williams, & Jacob, 2011)

1. Describe the problem situation.
2. Define the potential ethical–legal issues involved.
3. Consult available ethical and legal guidelines.
4. Confer with supervisors and colleagues.
5. Evaluate the rights, responsibilities, and welfare of all affected parties.
6. Consider alternative solutions and the likely consequences of each.
7. Select a course of action and assume responsibility for this decision.



FEDERAL STATUTORY EXPECTATIONS

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FERPA OVERVIEW

- FERPA protects the confidentiality of student educational records for any state or local agency that receives federal funds under a program administered by USDOE
 - Signed into law 1974, amended through 2013
- Two Parts:
 - Students have right to inspect and review their own education records, request corrections, halt the release of PII, and obtain copy of institutions policy concerning access to records (20 U.S.C.S. § 1232g(a))
 - Prohibits educational institutions from disclosing “PII” without written consent of student, or if student is a minor, the student’s family (20 U.S.C.S. § 1232g(b)).

FERPA (CONT'D)

- **Exceptions – Release of Student Records without Student's Consent**
 - School officials with legitimate educational interest
 - Other schools student seeks or intends to enroll
 - Education official or audit or evaluations purposes
 - Accrediting organizations
 - Parties in connection with financial aid to student
 - Organizations conduct certain studies for or on behalf of a school
 - Comply with a judicial order or lawfully issued subpoena
 - Case of health and safety emergencies
 - State/local authorities within a juvenile justice system

FERPA (CONT'D)

- Exempted school records:
 - Records in the sole possession of school officials;
 - Records maintained by a law enforcement unit of the educational institution;
 - Records of an educational institution's non-student employees;
 - Records on a student who is 18 years of age or older or who attends a post-secondary institution that are maintained by a health professional. (20 U.S.C.S. § 1232g(a)(4)(B)).
 - "Treatment records" are not educational records

- In addition, FERPA allows, but does not require, schools to release "directory information," including students' names and addresses, to the public. (20 U.S.C.S. § 1232g(a)(5)(A)).
 - However, this exception was modified in 2002, and high schools are now required to provide students' names, addresses and telephone numbers to military recruiters, unless a student or parent opts out of such disclosure.

IDEIA CONFIDENTIALITY

- **Scope:**
 - The IDEA Part B and Part C confidentiality requirements apply from the time a child is referred to IDEA. The IDEA Part B confidentiality regulations apply to records collected or maintained once the child is referred to IDEA Part B. 34 CFR §300.610. The IDEA Part C confidentiality regulations apply from when a child is referred to IDEA under age 3. 34 CFR § 303.401(c)(2).
- The IDEA Part B regulations in 34 CFR § 300.32 define PII as information that contains:
 - The name of the child, the child's parent, or other family member;
 - The address of the child;
 - A personal identifier, such as the child's social security number or student number; or
 - A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.
- Permit disclosure of PII without parent consent to officials of participating agencies
- See IDEA and FERPA Crosswalk:
https://studentprivacy.ed.gov/sites/default/files/resource_document/file/IDEA-FERPA%20Crosswalk_08242022.pdf



HIPAA CONFIDENTIALITY

- Enacted 1996, Health Insurance Portability & Accountability Act
 - Improve efficiency and effectiveness of health care system
 - National standards and requirements for electronic health care transactions
 - Protect privacy and security of individually identifiable health information
- Protect health records and other PHI (protected health information) by requiring appropriate safeguards to protect privacy, setting limits and conditions on the uses and disclosures without patient authorization. Also gives right to examine and obtain copy of health records and to request corrections.
- “Covered entities”
 - “Health care providers” include institutional providers of health or medical services, such as hospitals, as well as noninstitutional providers, such as physicians, dentists, and other practitioners, along with any other person or organization that furnishes, bills, or is paid for health care in the normal course of business.
 - Covered transactions are those for which the U.S. Department of Health and Human Services has adopted a standard, such as health care claims submitted to a health plan.

HIPAA DISCLOSURES & EMERGENCIES

- Permitted disclosures
 - Disclosures for treatment, coordination/management of health care and related services by health care providers, consultation between providers, and referral of patients for treatment
 - Disclosures to family, friends, others involved in individual's care
 - Disclosures to prevent a serious and imminent threat
 - Health care providers may share PHI with anyone as necessary to prevent or lessen a serious and imminent threat to the health or safety of the individual, another person, or the public – consistent with applicable law (such as State statutes, regulations, or case law) and the provider's standards of ethical conduct. This permission includes the sharing of psychotherapy notes, which otherwise receive special protection under the Privacy Rule. See 45 CFR § 164.508(a)(2). Thus, without a patient's authorization or agreement, health care providers may disclose a patient's health information to anyone who is in a position to prevent or lessen the threatened harm, including family, friends, caregivers, and law enforcement. The HIPAA Privacy Rule expressly presumes the good faith of health care providers in their determination of the nature and severity of the threat to health or safety and the need to disclose information. See 45 CFR § 164.512(j).

HIPAA & FERPA INTERSECTION

- HIPAA generally does NOT apply to an elementary or secondary school
 - Either not a HIPAA covered entity
 - Is HIPAA covered entity but maintains health information that are “education records” under FERPA and not PHI under HIPAA
- However, if school provides health care to students in normal course of business (e.g. health clinic), transmits PHI → HIPAA duty
- See Joint Guidance: <https://www.hhs.gov/sites/default/files/2019-hipaa-ferpa-joint-guidance.pdf>



OHIO STATUTORY EXPECTATIONS

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OHIO BOARD OF PSYCHOLOGY

- Ohio regulates the practice of psychology and school psychology through the following:
 - ORC 4732.01 Definitions
 - ORC 4732.14 Registration of licenses
 - ORC 4732.17 (A-D) Actions against applicants or license holders
 - OAC 4732-3-01(B, C, Q, R, S) Definitions
 - OAC 4732-5-01 Psychological procedures which create a serious hazard
 - OAC 4732-5-02 Exemptions from licensure
- These are available as the Oral Examination Manual:
<https://psychology.ohio.gov/licensing-and-renewal/getting-licensed-sa/independent-school-psychologist/oral-examinations/oral-examinations>

4732-13-04 REQUIREMENTS PERTAINING TO SUPERVISION

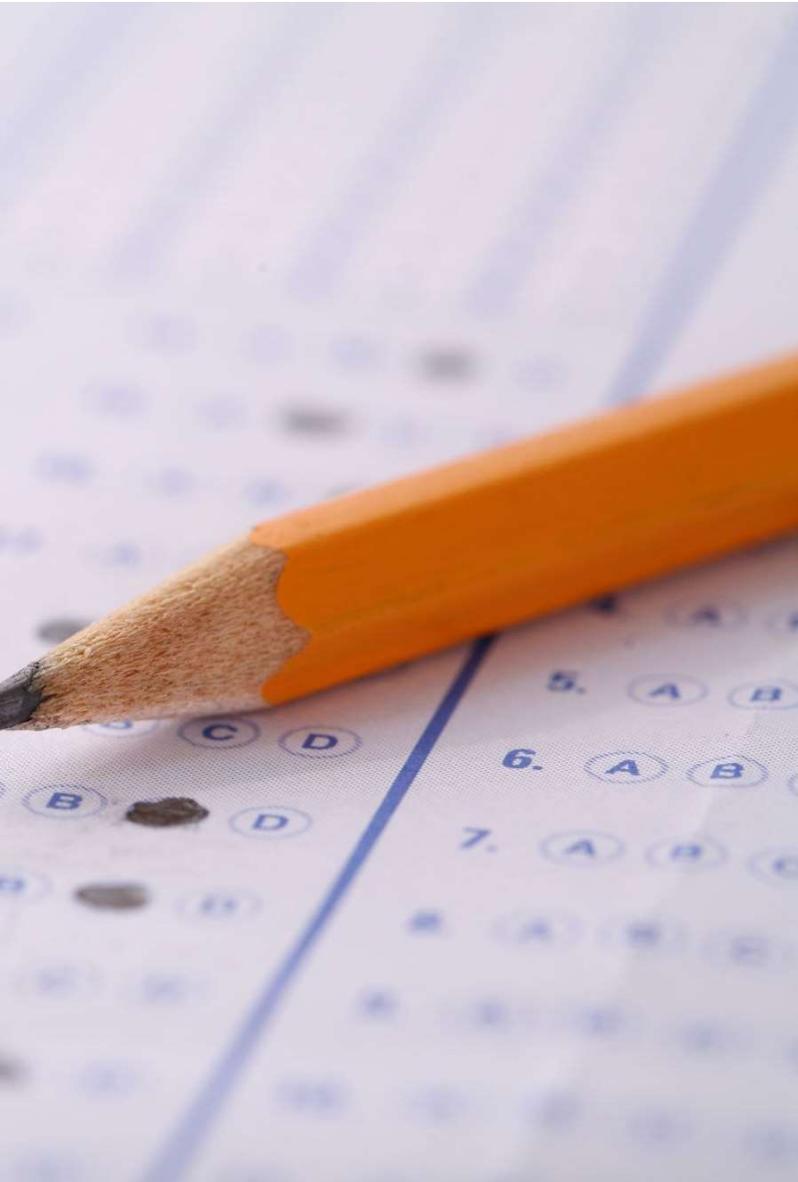
- Relationship between supervisor & supervisee:
 - (c) Statement on the limits of confidentiality, including the possible need to report certain information according to law, and the supervisor's review of the client's progress;
- (viii) Ensure that confidential communications stored electronically cannot be recovered and/or accessed by unauthorized persons when the licensee disposes of electronic equipment and data.

NEGLIGENCE

- (c) A license holder shall store and dispose of written, electronic, and other records of clients in such a manner as to ensure their confidentiality. License holders shall prepare in advance and disseminate to an identifiable person a written plan to facilitate appropriate transfer and to protect the confidentiality of records in the event of the license holder's withdrawal from positions or practice.
- Each license holder shall report to the board on the biennial registration (renewal) form the name, address, and telephone number of a license holder or other appropriate person knowledgeable about the location of the written plan for transfer and custody of records and responsibility for records in the event of the licensee's absence, emergency or death. The written plan referenced in this rule shall be made available to the board upon request.

(C) WELFARE OF THE CLIENT, EVALUEE, AND ASSOCIATED PERSONS:

- (a) License holders in a treatment role with couples, families, or groups shall clarify with all parties and document the nature of one's professional obligations to the various clients receiving services, including limits of confidentiality and access to records.
- (5) Informed consent. A license holder shall accord each client informed choice, confidentiality, and reasonable protection from physical or mental harm or danger.
- (b) When a license holder is in an individual treatment role, there may be reason for a third party to join one or more sessions for a limited purpose. The license holder shall document in the record that the client or legal guardian has acknowledged understanding the purpose and need for the third party to be present and the circumstances and extent to which confidential information may be disclosed to the third party. The license holder shall document that the third party has provided an understanding that the individual is not a client, that there is no expectation of confidentiality between the license holder and the third party, and that the third party shall not have rights to access any part of the client's file (unless the client provides written authorization to release specific confidential information). A license holder shall not render opinions or recommendations to any person or entity, including but not limited to the client, any court, attorney, guardian ad litem, or other professional concerning such third parties.



(E) TESTING AND TEST INTERPRETATION:

- (a) A license holder shall treat the results or interpretations of assessment regarding an individual as confidential information.
- (3) Test interpretation. Test scores, like test materials, may be released to another person or an organization only in a manner that adheres to the client's rights to confidentiality as set forth in paragraph (G) of this rule.

(F) CONFIDENTIALITY

- (1) Confidential information is information revealed by an individual or individuals or otherwise obtained by a license holder, when there is a reasonable expectation that it was revealed or obtained as a result of the professional relationship between the individual(s) and the license holder. Such information is not to be disclosed by the license holder without the informed consent of the individual(s).

- (a) When rendering psychological services as part of a team or when interacting with other appropriate professionals concerning the welfare of a client, a license holder may share confidential information about the client provided that reasonable steps are taken to ensure that all persons receiving the information are informed about the confidential nature of the information being shared and agree to abide by the rules of confidentiality.

- (b) When any case report or other confidential information is used as the basis of teaching, research, or other published reports, a license holder shall exercise reasonable care to ensure that the reported material is appropriately disguised to prevent client or subject identification.

(F) CONFIDENTIALITY (CONT'D)

- (c) A license holder shall ensure that no diagnostic interview or therapeutic sessions with a client are observed or electronically recorded without first informing the client or the client's guardian obtaining and documenting written consent from same.
- (d) A license holder shall limit access to client records and shall ensure that all persons working under his/her authority comply with the requirements for confidentiality of client material.
- (e) A license holder shall continue to treat all information regarding a client as confidential after the professional relationship between the psychologist or school psychologist and the client has ceased.
- (f) In a situation in which more than one party has an appropriate interest in the professional services rendered by a license holder to a client, the license holder shall, to the extent possible, clarify to all parties the dimensions of confidentiality and professional responsibility that shall pertain in the rendering of services.
 - (i) Such clarification is specifically indicated, among other circumstances, when the client is an organization or when the client has been referred by a third party.
 - (ii) In accord with paragraphs (C)(3) and (F)(3)(c) of this rule, a license holder shall clarify with the individual receiving services because of a third-party referral whether, and under what conditions-including costs, information or feedback will be provided to the individual receiving those psychological services.
- (2) Protecting confidentiality of clients. In accordance with section 4732.19 of the Revised Code, the confidential relations and communications between license holders and clients are placed under the same umbrella of a privilege as those between physician and patient under division (B) of section 2317.02 of the Revised Code. The privilege is intended to protect the interest of the client by encouraging free disclosure to the license holder and by preventing such free disclosure to others.
- Thus, the client rather than the license holder holds and may assert the privilege.

(F) CONFIDENTIALITY (CONT'D)

- (a) A license holder shall not testify concerning a communication made to him/her by a client.
 - The license holder may testify by express consent of the client or legal guardian or, if the client is deceased, by the express consent of the surviving spouse or the executor or administrator of the estate of such deceased client. If the client voluntarily testifies, the license holder may be compelled to testify on the same subject; or if the client, the executor or administrator files a claim against the license holder, such filing shall constitute a waiver of the privilege with regard to the services about which complaint is made.
- (b) Court decisions construing the scope of the physician-patient privilege, pursuant to section 2317.02 of the Revised Code, are applicable to this privilege between the license holder and the client.
- (c) A license holder may disclose confidential information without the informed written consent of a client when the license holder judges that disclosure is necessary to protect against a clear and substantial risk of imminent serious harm being inflicted by the client on himself/herself or on another person. In such case, the license holder may disclose the confidential information only to appropriate public authorities, the potential victim, professional workers, and/or the family of the client.
- (d) A license holder shall safeguard the confidential information obtained in the course of practice, teaching, research, or other professional duties. With the exceptions as required or permitted by statute, a license holder shall disclose confidential information to others only with the informed written consent of the client.
- (e) At the beginning of a professional relationship a license holder shall inform his/her client of the legal limits of confidentiality. To the extent that the client can understand, the license holder shall inform a client who is below the age of majority or who has a legal guardian of the limit the law imposes on the right of confidentiality. When services are provided to more than one patient or client during a joint session (for example to a family or couple, or parent and child, or group), a license holder shall, at the beginning of the professional relationship, clarify to all parties the limits of confidentiality.

(F) CONFIDENTIALITY (CONT'D)

- (f) Minor clients who are offered privacy as a means of facilitating free disclosure of information shall be told by the license holder that the parent(s) and/or guardian(s) have a right to access their records, unless otherwise prohibited by court order, statute, or rule. The license holder shall document in the record this disclosure to the minor client.
- (g) A license holder may release confidential information upon court order or to conform with state or federal laws, rules, or regulations.
- (h) A license holder shall be familiar with any relevant law concerning the reporting of abuse of children or vulnerable adults.

(H) TELEPSYCHOLOGY

- (ii) Potential risks to confidentiality of information due to the use of distance technology;
- (7) Ensure that confidential communications stored electronically cannot be recovered and/or accessed by unauthorized persons when the licensee disposes of electronic equipment and data;

STATE BOARD OF EDUCATION: PROFESSIONAL CONDUCT FOR OHIO EDUCATORS

- [Licensure Code of Professional Conduct for Ohio Educators](#) has 9 principles, adopted September 17, 2019:
 1. Educators behave in a professional manner, realizing that one's actions reflect directly on the status and substance of the profession.
 2. Educators maintain a professional relationship with all students at all times, both in and out of the classroom.
 3. Educators accurately report information required by the local board of education or governing board, state education agency, federal agency or state or federal law.
 4. Educators adhere to federal, state and local laws and statutes regarding criminal activity.
 5. Educators comply with state and federal laws related to maintaining confidential information.
 6. Educators serve as positive role models and do not use, possess or unlawfully distribute illegal or unauthorized drugs.
 7. Educators ensure school property, public funds or fees paid by students or the community are used in the best interest of students and not for personal gain.
 8. Educators fulfill all the terms and obligations in their employment contracts.
 9. Educators use technology in a responsible manner and safeguard the electronic devices and data entrusted to them.

STATE BOARD OF EDUCATION: PROFESSIONAL CONDUCT FOR OHIO EDUCATORS (CONT'D)

1. Professional Behavior

Educators shall behave as professionals, realizing their actions directly reflect on the status and substance of the education profession.

An educator serves as a positive role model to both students and adults and is responsible for preserving the dignity and integrity of the teaching profession and for practicing the profession according to the highest ethical standards.

Conduct unbecoming to the profession includes, but is not limited to, the following actions:

- a) Failing to adhere to the Licensure Code of Professional Conduct for Ohio Educators.
- b) Assisting another in committing an act of conduct unbecoming, as described in the Licensure Code of Professional Conduct for Ohio Educators.
- c) Having a continuing physical or mental inability, incapacity or addiction that significantly impacts the educator's ability to carry out his or her professional responsibilities and renders the educator incapable of safely maintaining the care, custody and control of students.
- d) Committing any violation of state or federal laws, statutes or rules although the conduct may not have resulted in a criminal charge, indictment, prosecution or conviction. (Except as noted in Principle 6(b), this does not include traffic violations.)
- e) Disparaging a colleague, peer, or other school personnel while working in a professional setting (teaching, coaching, supervising or conferencing) on the basis of race or ethnicity, socioeconomic status, gender, national origin, sexual orientation, political or religious affiliation, physical characteristics, age, disability or English language proficiency.
- f) Harassing, intimidating, or retaliating against a colleague, peer, or other school personnel.
- g) Sexually harassing any student, minor or adult in the school community.
- h) Failing to complete a criminal background check, as required by state or federal law.
- i) Violating local, state or federal procedures related to the security of standardized tests, test supplies or resources.
- j) Negligently failing to verify, prior to hiring, recommending for employment, or issuing payment, except as permitted by law, that an educator possesses the appropriate credential type for the educator's position (for example, the appropriate credential type means a teacher must possess a teaching credential, principal a principal credential, superintendent a superintendent credential, etc.).
- k) Accepting or holding employment that requires the educator to engage in activities or duties outside the scope of the educator's credential type.
- l) Being disciplined by another state educational entity or other professional licensing board or entity for unethical conduct.
- m) Committing an act of academic dishonesty (for example, plagiarism, falsification, fabrication, sabotage, or cheating in an academic setting).
- n) Engaging in nepotism, as prohibited by local, state, or federal law.

5. Confidentiality

Educators shall comply with local, state and federal laws related to maintaining confidential information.

An educator is entrusted with information that could be misused to embarrass or damage a student's reputation or relationship with others. Therefore, the educator has the responsibility to keep information about students confidential unless disclosure serves professional purposes, affects the health, safety, and welfare of students and others, is required by law, or parental permission has been given. An educator maintains the security of confidential information, such as academic and disciplinary records, testing materials, personal confidences, photographs, health and medical information, family status and/or income.

Conduct unbecoming includes, but is not limited to, the following actions:

- a) Willfully or knowingly violating any student confidentiality required by federal or state laws, including publishing, providing access to, or altering confidential student information on district or public websites, such as grades, personal information, photographs, disciplinary actions, or individualized educational programs (IEPs) without parental consent or consent of students 18 years of age and older.
- b) Using confidential student, family, or school-related information in a non-professional way (for example, gossip, malicious talk or disparagement).
- c) Violating local, state, or federal procedures or laws related to the confidentiality of standardized tests, test supplies, or resources.

STATE BOARD OF EDUCATION: PROFESSIONAL CONDUCT FOR OHIO EDUCATORS (CONT'D)

Operating Standards for the Education of
Children with Disabilities



 Department of
Education &
Workforce

OPERATING STANDARDS FOR THE EDUCATION OF CHILDREN WITH DISABILITIES (EFFECTIVE DECEMBER 1, 2023)

RULE 3301-51-04 CONFIDENTIALITY

- (A) Each educational agency shall adopt and implement written policies and procedures, approved by the Ohio department of education, office for exceptional children, that afford parents the opportunity to examine records in accordance with the procedures of 34 C.F.R. 300.610 to 300.628 , the Family Educational Rights and Privacy Act of 1974, August 1974, (FERPA) and its regulations at 34 CFR, Part 99, and as if it were named herein, and ensure protection of the confidentiality of any personally identifiable information in regard to the collection, use, storage, disclosure, retention, and destruction of that information

- (C) Notice to parents
 - (1) The educational agency must give notice that is adequate to fully inform parents about the requirements to ensure that the school district, county educational agency comply with this rule related to protecting the confidentiality of any personally identifiable information collected, used, or maintained under Part B of the IDEA.

(M) CONSENT

- (2) Except as provided in paragraphs (M)(2)(a) and (M)(2)(b) of this rule, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this rule and 34 C.F.R. Part 300.
- (a) Parental consent, or the consent of an eligible child who has reached the age of majority under Ohio law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with rule 3301-51-07 of the Administrative Code.
- (b) If a child is enrolled, or is going to enroll in a nonpublic school that is not located in the school district of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the school district where the nonpublic school is located and officials in the school district of the parent's residence.
 - (1) Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
 - (2) One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.
 - (3) All persons collecting or using personally identifiable information must receive training or instruction regarding the policies and procedures of the educational agency under 34 C.F.R. Part 99.
 - (4) Each participating agency must maintain for public inspection a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

(3) MEDIATION

- (vii) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that:
 - (a) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and
 - (b) Is signed by both the parent and a representative of the educational agency who has the authority to bind such educational agency
- (x) No part of the mediation discussion or sessions may be electronically recorded. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any federal court or state court of a state receiving assistance under the IDEA. The mediator may not be called as a witness in future proceedings related to the mediation sessions.

(D) WRITTEN SETTLEMENT AGREEMENT

- (d) Written settlement agreement If a resolution to the dispute is reached at the meeting described in paragraphs (K)(9)(a)(i) and (K)(9)(a)(ii) of this rule, the parties must execute a legally binding agreement that:
 - (i) States that all discussions that occurred during the resolution process shall be confidential and shall not be used as evidence in any subsequent due process hearing or civil procedure;
 - (ii) Is signed by both the parent and a representative of the school district of residence who has the authority to bind the district; and
 - (iii) Is enforceable in any state court of competent jurisdiction or in a district court of the United States

(10) CONFIDENTIALITY REQUIREMENTS

- (10) Confidentiality requirements When conducting child find, evaluation and service activities, the school district where the nonpublic school is located must be in compliance with all confidentiality requirements of the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004, December 2004 (IDEA), and the Family Education Rights and Privacy Act of 1974, August 1974 (FERPA).
- (a) If a child is enrolled or is going to enroll in a nonpublic school that is not located in the school district of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the school district where the nonpublic school is located and officials in the school district of the parent's residence.
- (b) The school district where the nonpublic school is located shall follow all the IDEA and the FERPA confidentiality requirements when serving children with disabilities attending chartered and non-chartered nonpublic schools.

(J) HOUSING, FACILITIES, MATERIALS, & EQUIPMENT & SUPPLIES FOR PRESCHOOL AND SCHOOL-AGE PROGRAMS

- (2) Each service provider must have access to an office or room space suitable for private consultation or intervention; access to a telephone in an area where scheduling, parent contacts, and confidential conversations regarding children can be completed; and adequate office equipment including a locking file cabinet with a key and supplies.

(D) GENERAL REQUIREMENTS

- (3) Drivers and transportation aides must have access to appropriate information about the child to the degree that such information might affect safe transportation and medical wellbeing during transport. This information must be accessible in the school transportation office and is confidential.

OHIO SB 29: OCTOBER 24, 2024 (ENNIS BRITTON, 2024, SPECIAL CLIENT ALERT)

- **Education records & student data privacy:**
 - 149.43 and 3319.31 be amended and sections 3319.325, 3319.326, and 3319.327 of the Revised Code be enacted
 - 4 main sections
 - Section I: New public records exemption
 - Section II: Licensure penalties for release of confidential information
 - Section III: Technology providers and their use of educational records
 - Section IV: Access or monitoring of student activity on school issued devices
- Previous to SB29, Ohio protected personally identifiable student information pursuant to O.R.C. §3319.321. Ohio defines “educational records” similar to the definition in the federal Family Educational Rights and Privacy Act (FERPA), as “records, files, documents and other materials that contain information directly related to a student and are maintained by a school district board of education or by a person acting for the school district.”
 - Educational records do *not* include records in the sole possession of school personnel, employee personnel records, or records of an adult student that are maintained by a professional providing medical treatment to the student.

YOUR ADOPTED BOARD POLICIES



- Sample NEOLA Records Numbers
 - 8330: Student Records
 - 8350: Confidentiality
 - 0123: Code of Ethics / Code of Conduct
- Be sure to review and be aware of your Adopted Board Policies AND Administrative Guidelines



A FEW GOTCHAS

Shhh...It's Not That Secret

Ohio School Psychologists Association (OSPA) Ethics Training – Fall 2024 Conference
Wednesday, November 6, 2024
5:00pm – 7:00pm | 2.00 Hours Contact Time in Ethics

BOUNDARIES (FUNICELLI & STAUS, 2024)

SOURCE: AMERICAN PSYCHOLOGICAL ASSOCIATION. APA DICTIONARY OF PSYCHOLOGY. BOUNDARY. UPDATED ON 04/19/2018. [HTTPS://DICTIONARY.APA.ORG/BOUNDARY](https://dictionary.apa.org/boundary)

- “In psychotherapy, an important limit that is usually set by the therapist as part of the ground rules in treatment. Boundaries may involve areas of discussion or physical limits, which are guided by ethical codes and standards. Respect for boundaries by both the therapist and client is an important concept in the therapeutic relationship.”
- Proper limits of a professional relationship...trust and vulnerability of latter are not abused
- Boundary crossing... harmless, non-exploitative, supportive of therapy.
- Boundary violations ... harmful ...

CHALLENGING BOUNDARIES (FUNICELLI & STAUS, 2024, P. 10)

Dual relationships

Treating multiple
family members

Custody/Divorced
Parent Situations

Social Media /
Confidentiality

Email / Text

Intrusive Client
Behaviors

CHALLENGING BOUNDARIES (FUNICELLI & STAUS, 2024, P. 16-17)

- Personal Usage
 - Communicating with friends/family
 - Chat groups
 - School alumni activities
- Professional
 - Podcasts, blogs, LinkedIn
- Mixing Both Personal / Professional
 - Personal and professional page on same platform, interwoven
 - Comments open to clients
 - Friending clients post discharge

CHALLENGING BOUNDARIES (FUNICELLI & STAUS, 2024, P. 18-19)

- **Social Media**
 - Comply with HIPAA, state and federal privacy regulations
 - Follow APA/NASP ethics code on confidentiality, advertising, public statements, as appropriate
 - Consider not responding / acknowledging reviews
 - Or respond in a neutral manner
- **Email / Texting**
 - Set expectations, practice policy
 - Limit texts to cancel/confirm appointments
 - Avoid detailed discussed through email
 - Use encryption/secure email
 - Expectations in response time
 - Avoid personal/social texts



IN THE WORKPLACE...

Shhh...It's Not That Secret

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HANDLING SENSITIVE WORKPLACE INFORMATION

- Provide confidentiality training. This should include advice on not sharing confidential information unintentionally – for example, through gossiping, or with people outside of work.
- Only share confidential information with those who have a reason to know. The fewer people who know something, the easier it is to contain the information.
- Use confidentiality, nondisclosure, and non-compete agreements with employees, clients, and contractors to further protect your business. You should use these legal documents whenever you have to disclose confidential information to people outside your organization. (These agreements should be drawn up by a lawyer.)
- Where appropriate, have a confidentiality policy that describes what information is considered confidential, and which outlines how to manage and share confidential information within the organization. It can also define when confidentiality can be broken. This typically includes situations where there is a legal obligation to disclose information, when a criminal act has been committed, or when someone's health and safety is in jeopardy.



HANDLING SENSITIVE WORKPLACE INFORMATION

- Require the proper disposal of sensitive information: for example, by shredding documents with a cross-cut shredder, or by destroying old computer hardware. (Be aware that computer equipment that is "thrown away" may be salvaged rather than being sent to landfill.)
- Restrict the ability to view, remove, or copy confidential information. In a computerized environment, it's very easy to access and disseminate information. Encrypt highly sensitive information. Use passwords to protect and limit access to information. Also, be aware that there are different levels of encryption – some can be compromised quickly, while others are more secure. (Ask you IT department for help if you need to know more.)
- Stamp documents "confidential" if required. (But don't overuse this practice, as people then might ignore it.)
- Secure physical information and files using a lock and key or a safe. Be sure that you keep track of the keys, ask former employees to return their keys, and update access lists regularly.
- Require people who leave their employment to return all documentation and material to the organization.

GOSSIP IN WORKPLACE

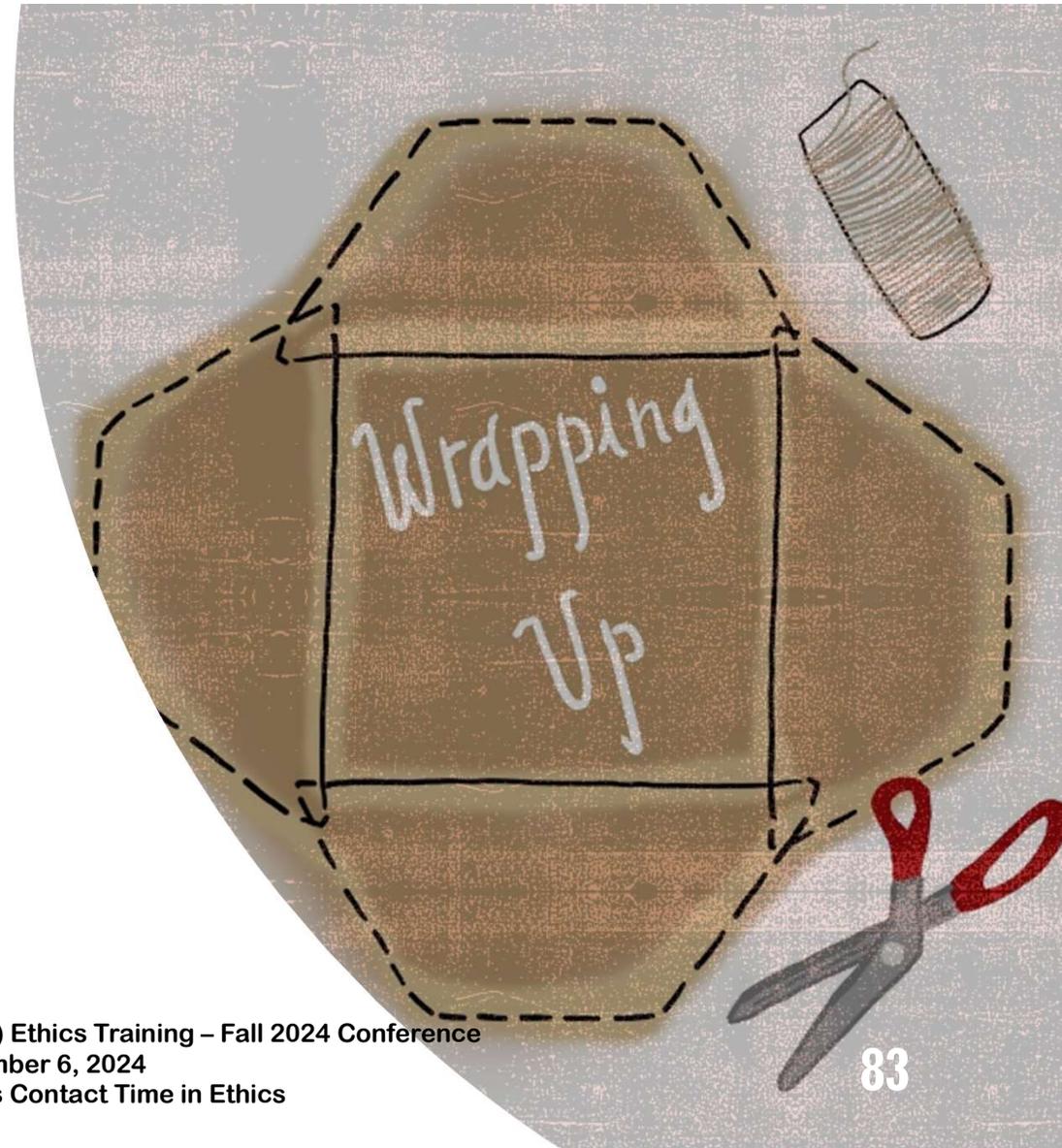
- Gossiping can destroy colleague relationships.
- It erodes trust and can create a hostile work environment → Disrespect
 - Harms reputation of work site → toxic work site
 - All of us share responsibility to create a healthy work environment = productivity, teamwork, and collective success
 - Working in a central office and Administrative building is a privilege and affords access many staff do not have
 - “Don’t listen if you can’t act.”
- Handling gossip situations:
 - Set clear expectation: gossip isn’t acceptable
 - Encourage open communication: feel comfortable discussing issues
 - Address issues promptly: address concerns promptly & directly with people
 - Promote teamwork & collaboration
 - Foster a positive work culture: promote respect, professionalism, and teamwork



Shh! It's Not That Secret

WRAPPING UP & QUESTIONS

Ohio School Psychologists Association (OSPA) Ethics Training – Fall 2024 Conference
Wednesday, November 6, 2024
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**SESSION
EVALUATION
QR CODE:**



THANK YOU FOR ATTENDING...

- **Erich Merkle, Ph.D., Ed.S., NCSP**
- Mobile: (330) 388-6982
- Email: erich@ospaonline.org

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