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## TSBEP Newsletter Vol. 25, No 2 Fall 2012

### Analysis of Impact of Federal Education Law on Board Rules Governing Informed Consent

The TSBEP has received requests from LSSPs to provide clarification on the issue of informed parental consent in public schools. TSBEP's requirements for obtaining informed consent are provided in Board rule 465.11(a-h). Since these requirements are somewhat different from the requirements contained in federal regulations regarding consent (34 CFR § 300.9) in public schools, some discussion is warranted. The Board directed the following clarification:

Board rule 465.38 (Psychological Services in the Schools) "acknowledges the unique difference in the delivery of school psychological services in the public schools from psychological services in the private sector." In fact, Board rule 465.38(6) states that "in the event of a conflict between state or federal statutes and Board rules, state or federal statutes control." Furthermore, Sec. 501.260(c) of the Psychologists' Licensing Act requires that "the rules of practice for a licensed specialist in school psychology must comply with nationally recognized standards for the practice of school psychology."

Nationally recognized standards have been developed by the National Association of School Psychologists (NASP). These standards, while not adopted by the TSBEP, are recognized as valuable resources for members of the profession. According to these standards, not all services provided by LSSPs will require informed parental consent. The following excerpt from Standard 1.1.1 of NASP's Principles for Professional ethics (PPE) provides:

*"School psychologists<sup>1</sup> encourage and promote parental participation in school decisions affecting their children (see Standard II.3.10). However, where school psychologists are members of the school's educational support staff, not all of their services require informed parent consent. It is ethically permissible to provide school-based consultation services regarding a child or adolescent to a student assistance team or teacher without informed parent consent as long as the resulting interventions are under the authority of the teacher and within the scope of typical classroom interventions."*

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<sup>1</sup> The title "school psychologist" in this standard would be applicable to LSSPs in Texas.

The NASP standard states that informed parental consent is not *ethically* required for the following activities related to individual students:

1. Reviewing an individual student's educational records
2. Conducting classroom observations of a student<sup>2</sup>
3. Assisting with in-class interventions and progress monitoring of a student
4. Participating in educational screenings conducted as part of a regular program of instruction

However, the standard further states that informed parental consent is *ethically* required if the consultation about the individual student is likely to be extensive and ongoing or if school actions may result in a significant intrusion on student or family privacy beyond what might be expected in the course of ordinary school activities.

In addition to the national standards that address informed parental consent, there are federal regulations that provide clarification on when informed consent may be required. In 34 CFR §300.302, it states that "*The screening of a student by a teacher or **specialist** to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.*" (Authority: 20 USC 1414(a)(1)(E)). The terms "evaluation" and "screening" are further defined in the *Analysis of Comments and Changes* section of the Federal Register, Volume 71, Number 156 (August 14, 2006). The following definitions are provided:

*An "evaluation," as used in the Act, refers to an individual assessment to determine eligibility for special education and related services, consistent with the evaluation procedures in §§300.301 through 300.311. "Screening," as used in §300.302 and section 614(a)(1)(E) of the Act, refers to a process that a teacher or specialist uses to determine appropriate instructional strategies. Screening is typically a relatively simple and quick process that can be used with groups of children. Because such screening is not considered an evaluation under §§300.301 through 300.311 to determine eligibility for special education services, parental consent is not required."*

Thus, federal regulations have control over the requirements for informed parental consent in the public schools and the national standards developed by NASP provide further clarification on when consent may or may not be required. LSSPs who participate as members of student assistance teams may not be required to obtain informed parental consent for activities identified in paragraph three above (items #1 - #4), as long as the resulting interventions are:

- under the authority of the teacher; and
- within the scope of typical classroom interventions

LSSPs may be required to obtain informed parental consent for the described activities if:

- the LSSP's services are likely to be extensive and ongoing; or
- school actions may result in a significant intrusion on student or family privacy beyond what might be expected in the course of ordinary school activities

In short, if the LSSP's services are consistent with the federal definition of "screening" and do not involve individual assessment practices (e.g., the administration, scoring and interpretation of norm-referenced assessment instruments with individual students) or the collection of extensive student and family information (beyond the typical information collected for school purposes), then, informed parental consent may not be required.

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<sup>2</sup> Classroom observations to collect data related to a suspected disability (e.g., using systematic procedures such as time sampling) would require informed consent.