

Psychological Assessment of Children at School

Ethical and Legal Perspectives

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ABSTRACT

Aim

The aim of this article is to analyse psychological assessments of children at school in the context of professional ethics and legal regulations. A hypothetical example (based on fact) of typical psychological services in education is discussed. The focus is on both inappropriate and good practices in the context of Polish legal regulations and ethical values in the psychological profession.

Theses

Psychological screening is an essential service provided by school psychologists in Poland. The aim of psychological screening is to assess children's educational needs, emotional development, and well-being, and to implement adequate interventions that embrace the needs of individual students, peer groups, and the organizational climate. Appropriately processed information gained through psychological screening provides a basis for well-tailored educational plans, counteracts negative group processes, and supports the social and emotional development of children.

However, the acquisition of sensitive information about students and their social environment is a process that must be carried out with respect for privacy and integrity, and in accordance with the legal regulations and professional ethics. This is a highly sensitive issue because school psychologists play complex roles and establish relationships with various stakeholders, including students, parents, teachers, and school principals.

Conclusions

Psychologist should respect the client's rights. In the process of accessing private information, a psychologist gains the patient's trust, provides comprehensive information about

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the purpose and scope of the assessment, and obtains the patient's informed consent. Students should be aware that they have the right to withdraw their consent, even if it was given by the parents. Client's confidentiality implies that students and their parents should be informed whether sensitive information would be shared with other stakeholders, such as teachers. Psychologists should respect the students' and parents' right to receive feedback and the results of the assessment. Adherence to these principles shows respect for students' integrity and increases the quality of psychological services at school.

Keywords: professional ethics, school psychologist, informed consent for psychological services, ethical dilemma, psychological services for children

Description of the Problem

This article analyses psychological screening of children's emotional needs in the educational context. The emotional development and well-being of children can be assessed with the use of psychological questionnaires and surveys in the school setting. These tools enable psychologists to assess the emotional climate in a peer group, the emotional needs of individuals, and the risk of depression, suicide, social exclusion, and violence at home or in school. Surveys are a quick method of data collection, and they are designed to identify possible risks and implement programmes promoting mental health and well-being. Questionnaires, including sociometric tests, enable psychologists to identify sub-groups (cliques) that lead to social exclusion, as well as positive processes, such as popularity or leadership. The gained insight enables psychologists to create educational plans for the classroom, counteract negative social phenomena, and promote the social and emotional development of children. A child's functioning in the classroom and at home should be explored in a broader context to prepare effective individual programs that support his or her social and emotional needs, as well as special educational needs.

By gaining insight into group dynamics and the emotional climate in the child's home, a psychologist can plan and implement effective programs for solving interpersonal problems, and monitoring and supporting a child's individual development. However, the acquisition of sensitive information about students and their environment is a process that must be carried out with respect for privacy and in accordance with the laws regulating the professional ethics of psychologists. The following discussion provides guidelines for achieving these goals in observance of ethical and legal regulations. Hopefully, the presented analysis will prompt practitioners to introduce minor adjustments in the process of data collection to ensure that the rights of children and their legal guardians are not violated.

According to parents, some schools collect sensitive data without due respect for the principles of good practice. The following scenarios may apply:

- At the beginning of the school year, parents (legal guardians) give written consent for their children to receive undefined psychological assistance as part of school services.

- During the school year, a school psychologist (or an educator) visits the classroom without prior notice. Most students are not familiar with the visitor. The psychologist asks students to complete a questionnaire in the classroom. The survey can be anonymous, or students may be asked to sign their questionnaire forms. Students who are not willing to participate in the survey are told that the survey is mandatory.
- The psychologist collects the questionnaires and analyses them at a later time. In some cases, the psychologist collects the questionnaires, reviews them in the classroom, and asks students to fill in missed items or answer open-ended questions more extensively. The psychologist may or may not give feedback to the students.

A similar scenario took place in a Warsaw-based school in the 2018/2019 school year¹. A school psychologist in an elementary school visited the classroom as a substitute (in the absence of the lead teacher) and told the students that they would complete a questionnaire survey. The students were required to sign the forms with their full name and answer all questions. The questionnaire contained highly detailed sociometric questions (e.g., with whom would you like to go on a trip/with whom you wouldn't like to go on a trip and why?) and questions about relationships in the family home (e.g., what do you dislike about your parents/what would you change about them/why?). Participation was mandatory, and the children were not informed about data confidentiality, limits to confidentiality, or how the results would be used. Some students experienced discomfort, and they felt that the questions unduly invaded their privacy because they had not built a relationship of trust with the psychologist. The survey was obligatory, and the students completed the questionnaire without disclosing their private feelings and thoughts. During the process, the students were closely monitored by the psychologist, and students who provided short answers were asked to elaborate. At home, some children shared their negative experiences, which raised concern and encouraged some parents to seek professional and legal help.

Analysis of the Problem

The discomfort experienced by some children and their parents in the described situation raises serious doubt as to whether the psychologist's conduct was consistent with professional ethics and legal regulations. The following fundamental ethical and legal criteria apply in the described scenario: personal integrity, privacy, right to withdraw informed consent, confidentiality, and trust. Personal integrity is a concept that is closely related to privacy, and it posits that individuals are characterized by subjectively valid "wholeness" which should not be transgressed without necessity. The concept of privacy, on the other hand, relates to the fact that certain types of personal information are not disclosed.

¹ Confidential information from one of the parents.

Some private information is never shared, or it may be shared with the closest persons at the individual's discretion, but not with persons who not trusted, let alone the public. Individuals have personal integrity when they are able to fully control private information that is shared with others, the extent to which that information is shared, and with whom. Individuals who occupy a low position in the hierarchy, such as school students, should be able to protect their dignity, integrity, and privacy with the support of school personnel. School employees should not use their higher position in the hierarchy to violate students' integrity and privacy. This principle must not be limited.

Integrity and privacy are values that are enshrined in the Code of Ethics for Psychologists of the Polish Psychological Association. According to section 11.1 of the Code: "Information pertaining to the subject's private life may be collected only to the extent that is necessary for achieving the aim of the psychological assessment" (PPA, 2018). In other words, the subject's privacy may be compromised during a psychological assessment. Invasion of privacy may be necessary to achieve positive results, but it should not be excessive and should be limited to a minimum.

It should be noted that in the analysed case, the survey not only violated the students' rights to privacy by forcing them to disclose their feelings about other people, but also their families' right to privacy by forcing the students to disclose sensitive information about their families. The survey violated the integrity of both private and family life. The subjects' consent to invasion of privacy poses yet another problem. According to section 10.2.a of the Code of Ethics for Psychologists: "The psychologist conducts an assessment solely upon the subject's voluntary and informed consent." Section 10.2.b states that "The psychologist should provide sufficient information about the aim of the assessment, its purpose, form, and the applied methods [...]". Do these provisions apply solely to adults? As regards a psychologist's relationship with vulnerable clients, section 10.1b of the Code states that "The psychologist should not be guided by prejudice or discrimination in his or her professional practice, in particular in areas relating to [...] age [...]", and paragraph 10.2.c posits that "If the subject has a limited capacity to make autonomous decisions, the consent to participate in a psychological evaluation may be given by the subject's legal guardian. In this case, the information about the psychological assessment should be communicated to the subject as fully as possible and in a manner that is best suited to his or her cognitive ability". In the discussed example, these requirements were not met. The students were not informed about the reasons for the invasion of privacy, they did not give their informed consent, and were forced to participate in the survey.

What is the recommended procedure for conducting psychological assessments of students in the school setting? Above all, it should be noted that by signing an informed consent form at the beginning of the school year, parents give only general consent to psychological services in school, and the expressed consent lacks specificity. Any interventions that invade the students' integrity and privacy, especially diagnostic activities, require detailed informed consent. Thus, it is the psychologist's duty to inform parents about the objectives

of such assessments, the relevant procedures (interviews, surveys), their duration, the risk of emotional discomfort, whether any sensitive issues will be raised (e.g., property, religious, political, sexual issues, privacy of other family members), type of questions in the survey, presentation of the results, whether children/parents will receive feedback, and how and to whom the results will be communicated. The parents should be asked to give consent to a planned diagnostic study only after they have been provided with the above information. Students whose parents have given such consent should be provided with the same information (presented in a manner that is adapted to their age and cognitive ability), and their consent to participate in the study should also be obtained. Students who have been provided with comprehensive information and whose parents have given informed consent should be able to decide individually whether they want to take part in the study. The psychologist is obliged to respect their autonomous decision. The Code of Ethics for Psychologists clearly stipulates that under no circumstances, students' consent can be obtained under pressure, let alone coercion, but rather on the basis of unconstrained informed consent. Mandatory psychological evaluations are strictly regulated by law; they are an exception to the rule, and are not related to the work of school psychologists. The evaluated subjects have the right to understand the context, the reasons for the assessment, and the resulting benefits. Consequently, the psychologist should communicate the results, provide feedback by establishing dialogue with the subject, maintain confidentiality (without involving third parties), explain the results, and address the subject's concerns. Section 10.1.c of the Code of Ethics for Psychologists explicitly states that "The psychologist strives to strengthen the subject's autonomy in interpersonal relations, including in the relationship with the psychologist. [...] The psychologist may not adopt a dominant position in his or her relationship with the evaluated subject [...]"

Legal Context

The right to privacy is protected under international conventions and the Polish law. In the international law, the right to privacy is addressed by, among others, the Convention for the Protection of Human Rights and Fundamental Freedoms (Journal of Laws of 1993, No. 61, item 284) which states that "Everyone has the right to respect for his private and family life, his home, and his correspondence" (Article 8, section 1). Article 47 of the Constitution of the Republic of Poland (Journal of Laws of 1997, No. 78, item 483) stipulates that "Everyone has the right to legal protection of his private life, family life, honour, and reputation, as well as the right to make decision concerning his personal life." The right to "respect" and the right to "protection" imply that an individual's privacy may be invaded only under special circumstances and solely upon the subject's prior consent.

As regards minors, children's rights to privacy are also protected by acts of international law, in particular the Convention on the Rights of the Child

(Journal of Laws of 1991, No. 120, item 526) which states that “1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his on his honour and reputation” (Article 16) (2). The child has the right to legal protection against such interference or assaults.” Article 72 of the Polish Constitution also declares that “The rights of the child shall be protected by the Republic of Poland [...]”.

The right to privacy is legally protected by international treaties and the Constitution of the Republic of Poland, and it should not be violated by state institutions. Legal measures that could strengthen the protection of privacy should be considered.

Legal provisions concerning the professional practice of psychology have been clearly formulated in the Act on the professional practice of psychology and the psychology regulatory body (Journal of Laws of 2001, no. 73, item 763, as amended). Article 12, section 1 of the above act clearly states that any psychological intervention requires the subject’s prior consent: “Psychological interventions may be initiated solely upon the prior consent of the diagnosed individual or group, subject to the provisions of sections 2 and 3”. However, sections 2 and 3 describe only the circumstances in which a psychological intervention may be undertaken without the diagnosed subject’s consent, which are stipulated in the Penal Code, the Code of Criminal Procedure, military conscription laws, and laws concerning mandatory psychological examinations of persons with suspected mental disorders in the event of a direct threat to an individual’s life or health. These exceptions do not apply to educational psychologists. Therefore, save for the above circumstances, psychological assessments may not be conducted and private data may not be collected without the participant’s informed consent. The question that arises is whether the general consent given by the parents at the beginning of the school year justifies the psychological intervention in the analysed case. The applicable laws should be examined in greater detail to answer this question. Article 13 (1) of the Act on the professional practice of psychology states that “The psychologist shall inform the client of the purpose of the procedure, its course, the results, the manner in which the results will be communicated to other parties, and he or she should obtain the subject’s consent for the planned activities.” According to the legal definition of consent, the client must be informed about what she or he is agreeing to. This element was missing in the analysed case because neither the parents nor the children received information about the purpose of the intervention, its course, the results or how they might be shared. At the beginning of the school year, parents give general consent to place their children in the care of a school psychologist, but they are not informed about the goals or means of psychological interventions. General consent may be sufficient to resolve minor interpersonal conflicts. However, this shortcoming should be addressed when planning interventions that clearly invade a child’s privacy. In summary, the diagnostic procedure in the discussed case clearly violated the legal regulations governing the professional practice of psychology and the right to privacy. Moreover, section 2 of Article 13 of the Act on the professional practice of psychology states that “The provisions of the Act on the protection of personal data (Act of 29 August 1997 on the protection of

personal data; Journal of Laws, 2000, No. 133, item 883, No. 12, item 136, No. 50, item 580, No. 116, item 1216; 2001, No. 42, item 474, No. 49, item 509) shall apply if the results of the examination are to be used for purposes other than client care.” In the analysed case, data were probably collected for the purpose of presenting them to the psychologist’s superiors. Pursuant to the provisions of the Act on the protection of personal data, this information should have been clearly communicated to the clients (children, parents) (Journal of Laws of 2018, item 1000).

Unfortunately, there are no specific laws addressing a minor’s right to consent to a psychological assessment. Therefore, the general provisions of the Civil Code apply (Journal of Laws of 1964, no. 16, item 93), where legal capacity (the ability to express one’s own will) is determined by age. Children younger than 13 do not have legal capacity, and decisions on their behalf are made by legal representatives, namely the parents or legal guardians. Children who have reached the age of 13, but are not of legal age (are younger than 18 or, in the case of girls, have not married with judicial consent before the age of 18) have the right to express their will which, when confirmed by a legal representative, constitutes their formal consent. However, all codes of ethics in the professional practice of psychology, including the Code of Ethics for Psychologists of the Polish Psychological Association (PPA, 2018), clearly indicate that the child’s will should always be respected. Thus, professional ethics dictates that a responsible psychologist should obtain a child’s consent before invading his or her privacy, despite the fact that this issue is disregarded by the Act on the professional practice of psychology.

The reasons why school psychologists violate national and international laws by collecting confidential data from minors without their consent should be identified, and possible solutions to this problem should be proposed. Arguably, the reasons are complex and beyond the scope of this article. This issue could possibly be resolved through private prosecution for violation of personal rights (according to the existing jurisprudence and the legal doctrine, privacy is regarded as a personal right stipulated in Article 23 of the Civil Code). In this scenario, the affected children and their parents would be tasked with proving to the court that psychological surveys conducted without the participants’ consent have negative consequences. Perhaps, in the long run, this solution would improve psychological service standards in education.

Solutions

The professional role of a school psychologist is shaped by two independent factors: the educational context (including the educational law and relations with teachers) and evidence-based psychological knowledge and professional practice. In order to provide high-quality psychological support to school children, a psychologist must skilfully combine the formal requirements of the educational system with the principles of professional practice that are grounded in scientific

discovery and accepted standards of practice. Above all, such practices should be consistent with ethical values and professional standards of conduct. School psychologists play two roles as functionaries in the educational system (who report to the principal and the regulatory body) and representatives of a trustworthy profession who establish deep relationships with their clients based on trust. One of the greatest challenges facing school psychologists stems from the fact that these roles often come into conflict. Therefore, when planning and undertaking professional activities at school, regardless of whether such measures have been advocated by the principal, the teachers or proposed by the students or their parents, the psychologist should always focus on the fundamental values of his profession, namely the right to withdraw and the right to privacy and respect. Psychologists who consciously embrace these values are able to find the right solutions in any situation. The right to withdraw implies that the psychologist should always ask for the client's consent and should respect the subject's refusal to participate in the planned activity. In order to give his or her voluntary consent, the subject must be provided with comprehensive information about what he or she is agreeing to. For this reason, clients should be informed about the purpose, scope and manner of data collection. These requirements must be observed to guarantee respect for the student's integrity. The right to data confidentiality implies that a school psychologist has to obtain the parents' or the child's consent before personal data are shared with a third party (such as the authorities). If the subject withdraws or refuses to grant consent, the psychologist must ensure that personal data are protected and not shared. The psychologist also shows respect for his clients by informing students and/or their parents about the way in which the results of the assessment will be communicated.

The results should be communicated in a manner that respects the clients' privacy and sensitivity. Every effort should be made to ensure that the collected information delivers benefits (by promoting insight and understanding) and does not harm the client (incomprehensible information). Respect builds trust which is an essential element of the relationship between the psychologist and the client. Trustworthy professions should always rely on trust rather than dominance resulting from one's position in the hierarchy.

A review of legal regulations indicates that the described values and principles are protected by law in Poland. However, professional experience from other countries indicates that in addition to legal regulations, attention should also be paid to the quality of professional services, including psychological services, which may infringe upon the clients' sensitivity, integrity, and privacy. Legal regulations alone do not guarantee high-quality services. Therefore, the psychological community educates practitioners about ethical principles and the provisions of codes of ethical conduct. Such efforts are also made by the Polish psychological community. Codes of professional ethics and standards of good practice in various areas of psychological practice have been developed by psychological associations around the world. At universities, psychology students are trained in the principles of deontology and good practice in different professional contexts. As regards psychological assessments in education, the National Division of Psychological Assessment of the Polish Psychological Association developed

The Standards of Psychological Assessment in Education (2018) which comprehensively describe the principles of good practice in the school setting. These observations suggest that there is no shortage of legal regulations, professional guidelines, and professional training in Poland. The question that arises is why some school psychologists fail to respect the students' right to information and privacy? This negligence could be partly ascribed to the described conflict of professional roles. The role of a functionary is to collect, process, and archive data for statutory purposes. Functionaries are expected to cut costs, minimize the use of resources, and report to the principal. However, professional psychologists have a different role to play. School psychologists have to separate their relationship with the school principal from their relationship with the client (the student). They have to differentiate between the employer's rights and the rights of their clients. To some extent, this issue is addressed by section 5.3 of the PPA Code of Ethics for Psychologists: "Above all, psychologists must consider the welfare and rights of the individuals and groups with whom psychologists work. The obligation persists when psychological services are commissioned by another individual or institution [...]" (PPA, 2018)¹. Possibly, school psychologists identify too strongly with the functionary role, and not strongly enough with the role of the psychologist. Would the number of malpractice cases, such as that described in this article, decrease if school psychologists paid greater attention to their professional identity? It is impossible to answer this question. The fact remains that Poland does not have a regulatory board of professional psychology. By following the example of other trustworthy professions (such as physicians, attorneys, judges, and nurses), such an organization could assist psychologists in developing their professional identity and provide professional assistance in supervising ethical practices and the quality of psychological services. Such an organization could be established pursuant to the provisions of the Act on the professional practice of psychology and the psychology regulatory body (Journal of Laws of 2001, No. 73, item 763, as amended) to increase psychologists' awareness of their professional role and the need to preserve their identity. For the time being, active measures should be undertaken to develop the professional identity of psychologists as part of the existing, imperfect regulatory framework. I hope this article will contribute to that goal.

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