

Ethical & Legal Issues in Special Education

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Ethical & Legal Issues in Special Education

- ▶ **WHAT IS ETHICAL BEHAVIOR? WHAT IS ETHICAL LEADERSHIP?**
 - ▶ Making professional and personal decisions using moral principles.
 - ▶ **“Doing the right thing.”**
- ▶ **HOWEVER**, there is a lack of a universal understanding of what the right thing IS at any given time or circumstance.
- ▶ Ethical leaders acknowledge the complexity of moral situations while staying true to their inner moral compass.
- ▶ Ethical leaders communicate their core values through their everyday actions.
 - ▶ **What ethical leadership IS, is what ethical leadership DOES!**

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► Focus:

- Ethical Decision Making based on personal integrity based on honesty.

► Learner Objectives:

- Learners will understand the need for ethical decision-making when faced with situations that require sound ethical decision-making ability.
- Learners will become familiar with components of an ethical decision-making process.
- Learners will engage in the ethical decision-making process when presented with a challenging ethical and legal dilemma.

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- ▶ Reflect on the federal, state, and local agency policies, procedures, practices and codes of conduct affecting your current role as:
 - ▶ An education agency administrator
 - ▶ An education agency educator
 - ▶ An education agency related services provider
 - ▶ An evaluator
 - ▶ A facilitator, mediator, attorney, or other
- ▶ Reflect on the professional ethics affecting your current role and professional practice.
- ▶ Ask yourself, how familiar am I with those ethical standards that affect my practice? How often have I reviewed them or discussed them?

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▶ Laws of Special Education

▶ The Individuals with Disabilities Education Act (IDEA), as amended

- ▶ A landmark 1975 federal education statute that assures eligible children with disabilities, ages 3 to 21, the right to a free appropriate public education, at no cost to parents, individually designed to address their unique needs and provide for education to the maximum extent appropriate in the least restrictive environment, to allow for education with their non-disabled peers and access to the general education curriculum.

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- ▶ Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended
 - ▶ A landmark 1973 federal civil rights law that prohibits discrimination against individuals with disabilities solely on the basis of their disability in any program or activity that receives federal financial assistance. This law applies to children and youth with disabilities as well as adults.

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- ▶ The Americans with Disabilities Act (ADA), as amended (ADAAA)
- ▶ A landmark federal civil rights law enacted in 1990 that prohibits discrimination against individuals with disabilities in all areas of public life. It ensures that people with disabilities have the same rights and opportunities as everyone else. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportations, state and local government services, and telecommunications.

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- ▶ PRINCIPLES WITHIN IDEA
 - ▶ Child Find
 - ▶ Individual Evaluation
 - ▶ Non-biased, comprehensive evaluation for eligibility determination
 - ▶ Individualized Educational Program (IEP)
 - ▶ Develop, review, and revise at least annually;
 - ▶ Include needed supplemental supports and services, accommodations, modifications;
 - ▶ Define special education and related services services.

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- ▶ Provision of free appropriate public education (FAPE)
 - ▶ Special education and required related services
- ▶ Least Restrictive [educational] environment (LRE)
 - ▶ Education with non-disabled peers to the maximum extent appropriate
 - ▶ Access to and opportunity to progress in the general education curriculum
- ▶ Parental Rights, including meaningful participation
 - ▶ Due Process and Procedural Safeguards

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- ▶ **Acting in the Best Interest of the Child**
 - ▶ Not always a straightforward process.
- ▶ **Example: A fight between two students**
 - ▶ One child is the victim
 - ▶ One child is the bully
 - ▶ You have to be the leader for them both. They both need you to do the right thing.
 - ▶ Have concerns about students not being singled out and made to feel different.

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- ▶ Ethical & Legal Dilemma Considerations
 - ▶ Stakeholder initial reactions, emotions, relationships and perspectives
 - ▶ Applicable legal requirements (laws and regulations)
 - ▶ Applicable professional codes of ethics
 - ▶ Applicable agency policies, rules, and procedures
 - ▶ Applicable virtues, values, beliefs, morals, opinions, including those exhibited by various stakeholders
 - ▶ Biases potentially in play
 - ▶ Classroom-level responses
 - ▶ Character-centered, leadership-level decision making

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- ▶ Recognize the decision expectations of:
 - ▶ Individual stakeholders/stakeholder groups -
 - ▶ Multiple stakeholders may have competing values
 - ▶ District and building-level administrators
 - ▶ School Board members
 - ▶ Affected professional communities
 - ▶ Parents
 - ▶ Students
 - ▶ Community at large - effects of rumor, dis- and mis-information and inuendo

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► PRESSURES

- Knowing the difference between right and wrong, but navigating the ethical issues, which can be a slippery slope.
- Trying to meet everyone's expectations.
- Remaining fair, impartial, and thoughtful.
- Being transparent.
- Damage control - not making a bad situation worse.

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► Ethical Decision-Making Process

► Use and document the use of an *ethical decision-making process*.

► Key elements:

► The process is intentional, informed, and collaborative

► Take into account relevant laws, rules, code(s) of ethics, code(s) of conduct and potential harm.

► Consider the standards of practice for the profession(s) involved by seeking consultation and/or supervision from trusted colleagues, other professionals and, when appropriate, attorneys.

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- ▶ The process is documented
 - ▶ Document the decision-making process to demonstrate the identification of an ethical dilemma, due diligence performed, rationale for decisions and steps taken.
- ▶ The process takes into account individual autonomy, well-being, and safety.
 - ▶ Individuals may be unaware of potential consequences that could cause harm and take precedence over the individual's wishes or desire for autonomy or privacy.

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- ▶ If a student is involved, consider the student's chronological age and developmental level.
- ▶ Consider student and parental rights.
- ▶ Consider faculty roles, duties, responsibilities, rights.
- ▶ Identify potential risks and harm to any party involved.
- ▶ Identify potential courses of action and evaluate each based on the above.
- ▶ Identify steps to be taken.
- ▶ Evaluate the steps taken and any new dilemmas that may need to be addressed.

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► Steps:

- Determine whether there is an ethical and/or legal issue or dilemma. Identify and define it.
- Identify the key values and principles involved.
- Rank the values or ethical principles which - in your professional judgement - are most relevant to the issue.
- Gather information from applicable sources including relevant laws, rules, codes of ethics, and conduct. This may include conducting interviews with key stakeholders.

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- ▶ Identify potential cultural, religious and worldview factors and power dynamics that are present within the ethical or legal dilemma.
- ▶ Consult with appropriate professionals (e.g., supervisors, other student service professionals, a trusted colleague, attorney).
- ▶ Apply appropriate ethical standards of practice and the relevant agency policies, procedures, codes of conduct and standards to the decision-making process.

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- ▶ What to do?????
- ▶ ASSESS:
 - ▶ Identify the problem.
 - ▶ Establish the facts:
 - ▶ Facts are objective and unbiased, not based on personal opinion, perception or subjective views.
 - ▶ Outline the facts, separating out innuendos, assumptions, hypotheses, or suspicions.
 - ▶ Determine if it is a legal, professional or ethical problem, or a mixture. If legal, seek legal advice.

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- ▶ State the problem in a single sentence: Draw on the facts and use concrete, specific and neutral terms.
- ▶ Identify the specific principle(s) involved in the situation.
- ▶ Consider influential factions:
 - ▶ Internal factors: Your personal perspective, values and needs that might introduce bias or otherwise affect your decision.
 - ▶ External factors: Such as the perspectives of other involved parties, including their rights, vulnerabilities, and responsibilities.

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- ▶ Consult with others:
 - ▶ Confer with others who may have more knowledge or experience with the issues involved.
- ▶ PLAN. Tasks:
 - ▶ Brainstorm possible options, no matter how impractical or unrealistic they may seem.
 - ▶ Eliminate unethical or impractical/non-feasible options.
 - ▶ Consider the remaining options, weighing their pros and cons.
 - ▶ *Project outcomes in terms of cost, legality, and impact.*

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- ▶ More Challenging Situations
 - ▶ Values (your own or other peoples') may compete or conflict.
 - ▶ When faced with an issue or situation where a number of important values are at stake, and where...
 - ▶ There is no single best response apparent.
 - ▶ There is an acknowledged difference of opinion.
 - ▶ People feel bad about the circumstances or even the possible resolution.

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- ▶ **IMPLEMENT.** Tasks:
 - ▶ Make a decision: Decide what you believe is the most ethical and appropriate option.
 - ▶ Carry out the decision: Establish action steps or carrying out the decision.
- ▶ **EVALUATE.** This is the final step in the process. Use the following questions as a guide to reflect on and assess your decision and actions.
 - ▶ What was the outcome of the decision? Did your actions have the anticipated effect and consequences?
 - ▶ What worked well?
 - ▶ What would you do differently?
 - ▶ Should anything more be done?

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SCENARIO

Ethical Decision-Making Application

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▶ THREE SIMPLE TESTS

▶ JUSTICE

- ▶ Assess your sense of fairness - would you treat others the same in this situation?

▶ PUBLICITY

- ▶ Would you want your behavior reported in the press?

▶ UNIVERSALITY

- ▶ Could or would you recommend the same course of action to another professional in the same situation?

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