

The Ethic of Advocacy

Charles M. Masner

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THE ETHIC OF ADVOCACY

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Charles M. Masner

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Dr. Kathy Green

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DEDICATION

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CHAPTER I. INTRODUCTION

School psychologists have an ethical obligation to be advocates for children, according to the predominant professional organization for school psychologists, the National Association of School Psychologists (NASP, 2000). Although the NASP *Principles for Professional Ethics* state that school psychologists are to be advocates for children, the principles do not define advocacy, except through the inferences that may be drawn from what school psychologists must be, and do, in order to meet their ethical injunction to advocate for students. What is to be advocated for are the rights, welfare, needs, and best interests of the child who is a student, and who is the primary client of the school psychologist (NASP). For students who have certain disabilities, their rights, welfare, needs, and best interests are primarily defined by the Individuals With Disabilities Education Act (IDEA, 2004). These are students who meet 1 of the 13 disability categories of the IDEA and whose disability has an adverse impact on their learning so that they need specialized instruction. These students are legally entitled to a free appropriate public education (FAPE). Because students with disabilities are legally entitled to a FAPE, and because these students therefore have legal rights to be enforced, they are the students most in need of advocates to enforce those legal rights.

The focus of this study is on students covered by the IDEA. Although advocacy is also needed for children who are not of school age, that advocacy must take place, obviously, in non-school environments. Although advocacy for children in non-school environments is, also obviously, important, the school environment is the focus of this study because the school is the problematic public bureaucracy through which all children must eventually pass as students, unless, of course, they attend private schools. It is within this public-school bureaucracy that advocacy becomes most critical. In addition, although students with disabilities covered by Section 504 of the Rehabilitation Act of 1973 (Rehabilitation Act of 1973) are also entitled to a FAPE, the FAPE to which they are entitled only requires that their needs are met as adequately as their non-disabled peers (Chapman, 2000). Students with disabilities covered by the IDEA are legally entitled to more. However, effective advocacy for students covered by the IDEA can serve as a learning model for effective advocacy for students covered by Section 504, and, indeed, for all students.

Statement of the Problem

The ethical obligation of school psychologists to advocate for a FAPE for students with disabilities is a problem, because school psychologists are employees of bureaucracies, school districts, which are in turn composed of other employees, all of whom are accountable to school boards, which are in turn accountable to parents and voters. Thus, there will be competing views, and competing political powers in support of those views, in the process of

determining what should constitute the FAPE for which school psychologists, in their role as advocates, are ethically bound to seek for students with disabilities. The scope of the problem is substantial, because there are over 6 million students entitled to a FAPE under the IDEA (Bush, 2004).

The education of students with disabilities is affected as a result of how competing views are resolved about the meaning of the FAPE to which they are entitled. The education these students receive largely determines the quality of lives they will lead and the kind of democratic citizens they will be. Thus, the students' parents and other family members are also affected by the quality of the education that students with disabilities receive. The professional lives of the employees of the school district are affected. The lives of the students' non-disabled peers are affected. The budgets of school districts are affected. The lives of all citizens in a democratic society are affected by the quality of the education received by students with disabilities. The quality of this education is determined by the quality of the advocacy which promotes it.

If school psychologists do not satisfactorily meet their ethical obligation to be advocates for students with disabilities, the lives of students with disabilities may be diminished, because school psychologists have a depth and breadth of diagnostic and prognostic capabilities, as well as remediation capabilities, unequalled by any other school-system professional. School psychologists can be the key advocates within school systems for students with disabilities. However, if school psychologists do not live up to their ethical obligation to be advocates

for students with disabilities, there are no other actors within school systems who are as sufficiently qualified to fulfill this role, and to provide leadership in fulfilling this role.

Moreover, there is a more fundamental problem that this study addresses. The NASP *Principles for Professional Ethics* (hereafter referred to, interchangeably, as the NASP *Principles*) direct the school psychologists who are members of NASP to be advocates for students, but these principles do not define what advocacy means. Absent such definition, school psychologists who want to do their ethical best are left on their own to struggle with determining how to fulfill their role as advocates for students. The findings from this study will offer guidance about how advocacy is defined and perceived by practicing school psychologists, experts in school psychology, and advocacy experts.

The results of the survey portion of the study provide information about how prepared school psychologists believe they are to be advocates for students with disabilities. In addition, the survey results provide information about (a) the circumstances within which the ethical obligation for advocacy for individual students with disabilities manifests itself within the practice of school psychology; (b) the capabilities necessary for school psychologists to be effective advocates for individual students with disabilities; and (c) the barriers to, and the enablers of, effective advocacy by school psychologists on behalf of students with disabilities. Not to be clear about what the profession expects from school psychologists as advocates, when their ethical principles dictate that they be

advocates, countenances not only ethical disaster for school psychologists, but also educational disaster for the students whom they are ethically bound to serve.

*Advocating for a Free Appropriate
Public Education (FAPE)*

A FAPE is defined at 20 USC 1401(9) of the IDEA (2004) as:

Special education and related services that - (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary school, or secondary school education in the State involved, and; (D) are provided in conformity with the individualized education program required under [20 USC 1414(d)].

In addition, the United States Supreme Court, in *Board of Education v. Rowley*, 458 U.S. 176 (1982), described the determination of the meaning of *appropriate* to be:

First, has the State complied with the procedures set forth in the [IDEA]? And second, is the individualized educational program developed through the [IDEA's] procedures reasonably calculated to enable the child to receive educational benefits?

However, the Court's definition leaves undetermined the extent to which a procedural violation will constitute a denial of a FAPE. Is failure to give notice of an individualized educational program (IEP) meeting a denial of a FAPE? Probably not, unless the parents fail to attend because of lack of notice, and the result is an educational program to which the parents do not agree. However, even when, as is usually the case, parents attend IEP meetings, there can be debate about what an IEP "reasonably calculated to enable the child to receive educational benefits" (*Board of Education v. Rowley*, 1982) means. Advocacy is

critical to the determination of this meaning, as it is to the determination of all meaning, because advocacy is about persuading others to adopt a certain point of view, or to take certain actions: “Disagreements are not settled by the facts, but are the means by which the facts are settled” (Fish, 1980, p. 338).

A free appropriate public education (FAPE) is to be provided in the least restrictive environment (LRE). No student is to be rejected for eligibility and services due to the severity of the student’s disability. The content of a FAPE in the LRE, as indicated by the federal statutory citation, and by the U.S. Supreme Court in *Board of Education v. Rowley*, is to be determined by an individualized education program (IEP). This IEP is to be based upon a non-discriminatory evaluation, with parent participation, and with procedural safeguards provided to the parents to insure the provision of a FAPE in the LRE to the student who is their son or daughter and who is covered by the Individuals With Disabilities Education Act (IDEA). These are the primary principles of the IDEA. As a public employee of the school district, the school psychologist is ethically and legally bound to advocate for a FAPE in the LRE, by upholding these principles, for all students covered by the IDEA.

However, because the IDEA is designed to avoid a one-size-fits-all approach to educating students with disabilities, and because educating students with disabilities can strain the resources of public school district budgets and staffs, school psychologists will inevitably encounter conflict in their role as advocates. Parents and school districts can, and often do, differ in their views

about what constitutes a FAPE in the LRE for a student. Is 40 hours a week of an applied behavior approach appropriate for a student with autism? If the parents and the school district disagree on the answer to this question, what is the school psychologist's ethical obligation? In addition, what is the school psychologist's obligation when the needs of the student with autism conflict with the needs of another student? What does advocacy mean in this context, and therefore what does it mean for a school psychologist to be an advocate for students with disabilities covered by the IDEA?

The Advocacy Role of School Psychologists

Are school psychologists upholding the ethic of advocacy to seek a FAPE in the LRE for students? More fundamentally, do students need advocates? A lot of people inside and outside of public schools think so. In a book with a title that offers an explanation of why advocates for students with special needs are necessary, *Negotiating the Special Education Maze* (Anderson, Chitwood, & Hayden, 1997), the authors' quote one parent's frustration:

I felt a very small and incidental part of [the IEP] procedure, and at times I felt that my daughter really wasn't getting her full share or placement of services. It wasn't until I started networking with other parents that I started feeling empowered to all the services you rightfully should have (p. ix).

As this parent indicates, parents can, and should be advocates for their children. But parents can get so emotional and so overwhelmed, in attempting to address their children's needs, that their ability to be effective advocates suffers, as experts in the field have recognized (Wright & Wright, 2002). Also, parents

often lack sufficient knowledge about special education law. Therefore, although parents should always be advocates for their children (Wright & Wright), parents sometimes need advocacy help, from inside, and from outside, the special education maze.

Lay advocates and attorney advocates can provide this help from outside school systems. Lay advocates and attorneys can go with parents to IEP meetings, and can otherwise help parents in their communications and relationships with school-system staff on behalf of students with disabilities. However, school-system staff are often defensive about the participation of lay advocates and attorneys, especially attorneys. Nonetheless, to the extent that advocacy requires formal dispute resolution such as litigation, attorney advocacy will be appropriate.

School personnel can provide advocacy help within school systems. Special education personnel in particular, including school psychologists, are the educational staff that historically have worked most closely with children with special needs, and continue to be most likely to have the knowledge necessary to advocate within school systems for the special needs of children. The Council for Exceptional Children (CEC, 2003), the predominant organization for special education professionals, includes advocacy for exceptional students (students with disabilities or students who are gifted) as one of its standards for professional practice. In addition, the National Association of Social Workers (NASW, 2002), in its standards for school social work services, includes as one of those standards advocacy for students and families.

The NASP *Principles for Professional Ethics* (2000) require school psychologists, in support of their ethical obligation to be advocates for children, to be knowledgeable about the “organization, philosophy, goals, objectives, and methodologies” (p. 26) of the school system. They are required to have an understanding of the “goals, processes, and legal requirements” (p. 26) of the school system. They should become “integral members” of the school-system. They are to make their views known to other school-system personnel. They are to promote change within school systems. Thus, the extent to which school psychologists will be effective advocates for students within school systems will depend on their ability to persuade others, which will in turn depend on (a) their diagnostic and remedial skills and knowledge; (b) their ability to present rational and caring arguments, which includes their social and political skills; and (c) their ethical character. In order for school psychologists to be effective problem solvers, consultants, and hence change agents doing their best to promote the best interests of students, school psychologists need to be effective practitioners of the art and science of persuasion.

Purpose of the Study

Being an advocate is a positive value. The authority for this conclusion is that being a child advocate is an ethical injunction included in the NASP *Principles for Professional Ethics* (2000). However, the NASP *Principles* do not adequately define what being a child advocate means for the practicing school psychologist. What is missing in the literature is a definition of advocacy for

school psychologists and an appraisal of the perceptions of practicing school psychologists about the ethical admonition to be child advocates. This study offered a definition of child advocacy for school psychologists to evaluate, and explored the perceptions of school psychologists about their ethical responsibility to be advocates for the students with disabilities whom they serve. This study also explored the meaning school psychologists ascribe to the function of advocacy for improving the educational lives of students with disabilities in the public schools as viewed by practicing school psychologists. The perceptions of school psychologists have not been sufficiently assessed regarding their role in promoting this value. Such an assessment can help provide for better educating school psychologists about how to advocate more effectively and ethically on behalf of students.

Significance of the Study

The results of this study can be used to provide information and recommendations to NASP about how to better define the ethical admonition for school psychologists to be advocates. The study adds to the body of literature about the advocacy role of school psychologists by soliciting the expertise of practicing school psychologists about their role as advocates. Thus, the results can help provide better guidance to school psychologists about how to be effective advocates for students.

Research Questions

This study addresses these questions:

1. Do experts in school psychology, and practicing school psychologists, agree or disagree with the definition of advocacy presented by the researcher, and what changes, if any, would they make to that definition?
2. How prepared do experts in school psychology, and practicing school psychologists, believe school psychologists are to fulfill their ethical obligation to be advocates for individual students with disabilities?
3. As perceived by practicing school psychologists, and by school psychology experts, (a) what are the circumstances within which the ethical obligation for advocacy for individual students with disabilities manifests itself within the practice of school psychology, (b) what are the capabilities necessary for school psychologists to be effective advocates for individual students with disabilities, and (c) what are barriers to, and enablers of, effective advocacy by school psychologists on behalf of individual students with disabilities?

Definitions of Key Terms

Advocacy is the process of attempting to persuade others through logic, emotion, and ethical character. For a student with a disability covered by the Individuals With Disabilities Education Act (IDEA), advocacy is manifested in the creating and maintaining of a free appropriate public education (FAPE), in the

least restrictive environment (LRE), as determined through the process of creating and maintaining for that student an individualized education program (IEP). The focus of the researcher in this research is on advocacy for individual students, not systems advocacy.

The *Education for All Handicapped Children's Act (EAHCA)* is the federal law passed in 1975 providing for the education of students with disabilities. In 1990 it was renamed the Individuals With Disabilities Education Act (IDEA).

A *free appropriate public education (FAPE)* is that which is to be provided to students eligible to receive services under the IDEA. It is defined for each eligible student by the student's individualized education program (IEP).

The *Individuals With Disabilities Education Act (IDEA)* is the federal law that guarantees eligible students a FAPE. The most recent enactment is IDEA 2004, also known as the *Individuals With Disabilities Education Improvement Act (IDEIA)*.

An *individualized education program (IEP)* is the process and document through which a student eligible to receive a FAPE under the IDEA has that FAPE provided and defined.

The *least restrictive environment (LRE)* is the environment within which a student eligible under the IDEA to receive a FAPE is to receive that FAPE. It is a component of a FAPE. The LRE is generally understood to be the environment within which the student with a disability can best be included in the general

education curriculum with his or her non-disabled peers. The decision about what constitutes the LRE, like the decision about what constitutes a FAPE, is determined by each student's IEP, which is created by a team composed of the student's parents, appropriate school district representatives, and, when appropriate, the student.

Persuasion, as used by the researcher, means influencing the attitudes or behaviors of others.