**Informed Consent in Public Schools**

The Texas State Board of Examiners of Psychologists (TSBEP) receives many requests for clarification of Board rules as they relate to informed consent in public schools. The TSBEP recognizes the unique difference in the delivery of school psychological services from that of the private sector and would like to offer clarification for LSSPs regarding the issue of informed parental consent. Before this issue is addressed, it is important to note that the TSBEP has no regulatory authority over public schools in Texas. However, since the TSBEP issues the required license for providing school psychological services in public schools (i.e., the LSSP), the TSBEP is required to regulate the “activities” of those individuals practicing with this license. In an attempt to address the regulatory requirements for LSSPs, particularly the requirements for informed parental consent in public schools, the Board offers the following clarifications:

LSSPs assigned to federal support programs (e.g., special education):

* When LSSPs are assigned by a public school to provide psychological services to eligible students in federal programs (such as special education) the federal requirements for these programs, including the requirements for informed parental consent, super cede Board rules.

LSSPs assigned to general education programs:

* When LSSPs are assigned by a public school to work with other populations of students (i.e., general education), the “activities” may or may not be considered “psychological services”. Many of these activities are focused on prevention and support services and may not rise to the level of “psychological services”, but may be considered “educational services”. An example of an educational service might be *consultation*. However, since consultation might also be considered a psychological service, some differentiation is necessary.

Consultation as an *educational service:*

When consultation provided by an LSSP focuses on school-wide or classroom interventions aimed at all students or targeted groups of students as part of a Response to Intervention (RtI) process, this activity might be considered an “educational service”.

Consultation as a *psychological service:*

When consultation provided by an LSSP focuses on targeted interventions for a specific student, this activity rises to a level of a direct service that might be considered a “psychological service”. Thus, LSSPs must determine if the activity they are performing rises to the level of “psychological services”, which would require informed parental consent.

When determining if an activity rises to the level of a “psychological service”, LSSPs should consider the questions provided in Figure 1 below:

Figure 1:

1. Does the activity require the individual to hold a specific license or credential in order to provide that activity in the public school (e.g., counseling, assessment, etc.)?
2. **Is the activity solely reliant upon specialized education and training in psychology and psychological principles (such as that held by an LSSP)?**
3. **Would the activity constitute the practice of psychology as defined by TSBEP and the Psychologists’ Licensing Act?**
4. Does the activity include direct student services (i.e., services that are not under the authority of the teacher or other staff member)?

If the answer to any of the above questions is “yes”, then the service should be considered a “psychological service”, which would require informed parental consent.

It should be noted, however, that questions #2 and #3 may be more challenging to answer when performing activities in a prevention-focused model, such as RtI. As a guide, the LSSP might consider other *domains* that could be impacting a student’s performance before providing student-focused consultation. These other *domains* are represented by the ICEL acronym – *Instruction, Curriculum, Environment, Learner*. It is possible that these *domains* can be altered before the LSSP provides consultation focused on the individual student (which would require informed parental consent). Below is an illustrated example (Figure 2) of how the ICEL *domains* might be considered within the context of the RtI process and when consent would be necessary. For example, if the LSSP were consulting at Tier 1, the LSSP might consider instructional issues that could be impacting student performance *before* the LSSP focused on a concern for a particular student. Thus, no consent would be necessary since the focus is on instructional strategies and not on an individual student. Likewise, at Tier 2a, the LSSP might consider curriculum and environmental issues that could be impacting student performance *before* the LSSP focused on a concern for a particular student. Again, no consent would be necessary since the focus would be on the curriculum and environmental issues (e.g., classroom routines and structure) and not on an individual student. However, when an LSSP provides consultation at Tier 2b and Tier 3, issues become focused on the learner, or individual student. Thus, informed parental consent would be necessary.

**Figure 2: Informed Consent Conceptual Framework within an RtI Model -Addressing ICEL Domains**

**Tier 1: Instruction**

**Tier 2a Curriculum**

**Environment**

**Tier 2b:**

**Tier 3:**

**No consent**

**No consent**

**Consent**

**Learner**

*Summary:*

* TSBEP does not have the authority to regulate school districts, it only has the authority to regulate the “activities” of the individuals licensed by the Board (which includes LSSPs).
* The activities of LSSPs assigned to work with eligible students in federally-funded programs, such as special education, *may* be regulated by federal requirements that super cede TSBEP regulations, including requirements for informed parental consent.
* The activities of LSSPs assigned to work with students in general education settings may or may not rise to the level of “psychological services”, but some activities performed by LSSPs may be considered “educational services” and not subject to Board regulation.
* LSSPs should consider the four questions identified in Figure 1 to help differentiate “psycholgoical services” from “educational services”
* When providing consultation within a school’s RtI process, the consultation may not require informed parental consent if it is focused on other *domains* and not on the individual learner/student.