

Parental Rights to Inspect Educational Records: Who Qualifies as a Parent?

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[West Virginia Board of Education Policy 4350](#) provides legal guidance on the issues of the collection, maintenance, and disclosure of student data ("Policy 4350"). Most, if not all, West Virginia county boards of education have a policy in place that mirrors Policy 4350. Policy 4350, among other things, sets "forth the conditions governing the protection of privacy and access of parents and students as it relates to the collection, maintenance, disclosure and destruction of educational records by agencies and institutions under the general supervision of the West Virginia Board of Education."

Policy 4350 broadly defines educational records as "those records that are directly related to a student and are collected, maintained or disclosed by an educational agency or institution or by a party acting for the agency or institution." Some educational records under Policy 4350, specifically "directory information," are subject to disclosure without the specific consent of the parent or eligible student. "Directory information" often includes a student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

On the other hand, the majority of educational records must be kept confidential, and parents have the right to inspect these records. Examples of educational records that fall under this category are:

- grades and test scores¹;
- special education records;
- disciplinary records;
- West Virginia Department of Education data;
- personally identifiable information such as a student's ID code, Social Security Number; and
- video surveillance (bus videos)²

The issue that often arises for a county board of education is what rights do birth parents have in accessing their child's educational records, especially when these parents are separated? **Policy 4350 provides full rights to either parent**, unless a court order, state statute, or legally binding document specifically says otherwise. In other words, although one parent may have the decision making authority as it relates to the child's education (or even full custody), unless a court order specifically indicates that the other parent is not to be provided access to the child's educational records, both birth parents have full rights to access the child's educational records. This does not mean that both parents have the ability to make decisions as it relates to the child's education, but both have access to the child's educational records.

The issue that often arises for a county board of education is what rights do stepparents have in accessing a child's educational records? Although Policy 4350 is silent on the term stepparent, the [Family Educational](#)

[Rights and Privacy Act \("FERPA"\)](#) is helpful. The term parent is defined as a guardian, or an individual acting as a parent in the absence of a parent or a guardian. In particular, it has been determined under FERPA that a parent is absent if s/he is not present in the day-to-day home environment of the child. **Accordingly, a stepparent has the rights, under FERPA, to educational records where the stepparent is present on a day-to-day basis with the natural parent and child and the other parent is absent from the home.** As such, stepparents have the same rights as birth parents. Conversely, a stepparent who is not present on a day-to-day basis in the home of the child does not have rights under Policy 4350 or FERPA with respect to the child's educational records.

Should you have any questions on this issue or any issues please feel free to contact a member of Dinsmore & Shohl's [Education Law Practice Group](#).

(1) *Falvo v. Owasso Independent School District*, 288 F. 3d 1236 (10th Cir. 2002), ruled that when students in a class grade each others work, that such grades written on the work and reported to each other are "educational records".

(2) *Grimes v. Monongalia County Bd. of Educ.*, Civil Action No. 05-C-322, ruled that a bus video on a school bus was an educational record and not subject to release under the Freedom of Information Act.