

Fall

2014

## President's Letter

By

Karen Cummings



Greetings West Virginia School Psychologists!

I hope you have all had an exciting start to the 2014-2015 school year. I have always enjoyed the changes and newness that each fall season brings. This fall proves to be no different. In September a newly revised WV Policy 2419 was introduced and the Department of Education hired a new Superintendent of West Virginian Schools. October brings with it many changes and new editions to popular assessments which we use on a daily basis. I hope you have made plans to join us for the fall conference on October 20-21 at Glades Springs Resort as we explore many of these changes.

School psychology continues to be an ever evolving field. I remind you of the challenge I issued to you in my first presidential perspective; seize every opportunity to be a leader and to show others the value and importance of school psychologists in West Virginia. I am excited to announce that the executive board has taken steps to create a legislative committee that will help advocate for the importance of school psychologists in West Virginia. Throughout the year you will be receiving information regarding legislative and advocacy initiatives that affect school psychologists and the children we serve. We want to become more proactive than reactive to issues that affect our profession. The goal of the legislative committee is to provide you with resources to share with administrators, school boards, and legislators to increase the awareness of school psychology and the services that we offer.

I will be attending the NASP Southeastern Regional meeting in Birmingham, Alabama October 24-26. I am excited to be representing West Virginia and to be able to showcase the wonderful things our organization's psychologists have accomplished during the past year. One of the main goals of this meeting is for representatives to work together to develop an action plan for state organizations. I look forward to working on WVSPA's action plan and sharing the developed goals with you.

Finally, I would like to share with you that we have had several position changes within the executive board. An updated list of all board members will be provided at the fall conference. We will also update the executive board members lists on the WVSPA website as soon as all positions are appointed.

I would like to thank all of you for the amazing work you do throughout our state. Take care and I hope to see each of you at our fall conference.

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*WVSPA Spring 2014 Award Recipients*



*Stephen O'Keefe, Ph. D.  
Lifetime Achievement Award*

*And*



*Natalie Feola  
WV School Psychologist of the Year*

*The*



*Beverly Winter  
Chloe Hollinger Award*

*Winners*

*Are...*



*Crystal Smithson  
Past President*

## POLICIES TO PRACTICE

Lanai Jennings, PhD, NCSP  
Marshall University School Psychology Program

Dear Colleagues,

Welcome to the inaugural *Policies to Practice* column of *Psych Perspectives*. Each issue of the column will be dedicated to a different topic area of questions from West Virginia school psychologists and related school staff. In the first edition, I will address a cluster of questions regarding the storage, maintenance, access, and destruction of psychological protocols and reports aggregated during my final year at the West Virginia Department of Education. The *Family Educational Rights and Privacy Act* (FERPA), *Individuals with Disabilities Education Improvement Act* of 2004 (IDEA), and corresponding state policies serve as the primary source documents for this topic-grouped discussion.

Federal Policy	State Policy		
FERPA	<a href="http://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html">http://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html</a>	WVBE Policy 4350: <i>Collection, Maintenance and Disclosure of Student Data</i>	<a href="http://wvde.state.wv.us/policies/">http://wvde.state.wv.us/policies/</a>
IDEA 2004	<a href="http://idea.ed.gov/explore/home">http://idea.ed.gov/explore/home</a>	WVBE Policy 2419: <i>Regulations for the Education of Students with Exceptionalities</i>	

### 1. Is a test protocol an education record under FERPA?

Although some debate exists as to whether the protocol - as opposed to the psycho-educational report with the resulting standardized scores - constitutes an education record (Letter to Carroll Independent School District, 2005; Owasso Independent School District v. Falvo, 2002), the Office of Special Education Programs (OSEP) provided written clarification on the matter in the comment section of the 1999 IDEA regulations and again in its *Letter to Honorable Bill Shuster* (2007). An excerpt from the comments to the 1999 regulations is as follows:

***Records that are not directly related to a student and maintained by an agency or Institutions are not "education records" under FERPA and parents do not have a right to inspect and review such records. For example, a test protocol or question booklet which is separate from the sheet on which a student records answers and which is not personally identifiable to the student would not be part of his or her "education records." However, Part B and FERPA provide that an educational agency or institution shall respond to reasonable requests for explanations and interpretations of education records. (34 CFR §300.562(b)(1); 34 CFR §99.10(c)). Accordingly, if a school were to maintain a copy of a student's test answer sheet (an "education record"), the parent would have a right under Part B and FERPA to request an explanation and interpretation of the record.***

### 2. Does WVBE Policy 2419: *Regulations for the Education of Students with Exceptionalities* outline any requirements for maintaining test protocols?

Although test protocols are not specifically named, the *Parental Participation* section of WVBE Policy 2419, Chapter 10, *Procedural Safeguards*, outlines the following requirement which includes test protocols.

*To ensure parental participation in the special education process, the district shall afford the parents of a student with an exceptionality an opportunity to inspect and review **all education records with respect to the identification, evaluation and educational placement of the student**, and the provision of a free appropriate public education to the student. (Effective Date: 2014, p. 96)*

The *Confidentiality and Access to Records* section of the same chapter further affirms the right of the parent or adult student to inspect such records. Chapter 9, *General Supervision and Accountability for Performance and Compliance*, delineates district responsibilities in maintaining, collecting, reporting, and disclosing accurate data in a manner which upholds the relevant confidentiality policies.

**3. How long are protocols for individually administered intellectual, achievement, behavioral assessments, etc., required to be maintained by the local education agency (LEA) in West Virginia?**

West Virginia Board of Education Policy (WVBE) 4350: *Collection, Maintenance and Disclosure of Student Data* contains two stipulations with respect to timelines.

- i. 11.1.d. *For records collected for exceptional students under Policy 2419: a) the public agency shall inform parents when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to the child; b) the information must be destroyed at the request of the parents; c) however, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation. (Effective Date: 2013, p. 8)*
- ii. 11.2.c. *Records to verify implementation of federally funded programs and services and to demonstrate compliance with program requirements must be maintained for five years after the activity is completed. (Effective Date: 2013, p. 8)*

Thus, if an LEA were the subject of a state education agency audit, minimally the test protocols would be expected to be available for a period of five years after the completion of the assessment. However, nothing prohibits districts from maintaining education records longer, particularly if the district has the storage and/or electronic capacity to do so. Regardless of individual district timelines, the LEA shall inform parents of the duration the records will be maintained and when records will be destroyed.

It is important to note one exception to the five-year timeline exists in WVBE Policy 4350. An LEA is prohibited from destroying a test protocol or other education record if a parent specifically requests to inspect the record and the district has yet to provide parental access for the review.

**4. As a special education administrator, do I have the authority to request my contractual school psychologist produce the test protocols for review and storage at a school or district location?**

Yes. One general set of procedures should be implemented for the maintenance and destruction of all test protocols within the LEA. This procedure is expected to be consistent across time and noncontingent upon the salaried or contractual nature of the district's school psychologist(s). Consistency in collection, storage, and maintenance of records is important because, upon parent request, an LEA is required to inform parents of the location and types of records available.

At the same time, it is essential to assure contractual psychologists of the security measures in place to protect student confidentiality, test security, and copyright privileges, while also including them whenever appropriate on the current list of personnel within the schools who may access records of special education students, if contracted on a regular basis.

**5. Must LEAs copy protocols if parents request access?**

The inspection requirement under FERPA and WVBE Policy 4350 does not require the district to copy records when inspection and review are requested. Rather, WVBE Policy 4350 necessitates copying education records **only when other "circumstances effectively prevent the parent or eligible student from exercising the right to inspect"** (Effective Date: 2013, p. 6). To preserve professional standards regarding test security, the duplication of student protocols should be viewed as an option of last resort and alternative means for facilitating inspection should be exhausted within the 45 day timeline from initial request.

**6. Are electronic databases which maintain student level data covered under FERPA?**

As assessment publishers incorporate increasingly more technology into the individualized administration, scoring, and reporting of psycho-educational data, the maintenance and stewardship of such databases concomitantly increases in importance. The digital recording forms, raw scores, and resulting standardized scores contained within the databases are covered under FERPA and WVBE Policy 4350. However, most school psychologists will continue to print score reports, digital recording forms, etc., from the databases to include in the student's actual file. In this case, the electronic database would only duplicate information available within the existing student file.

Conversely, if information is maintained by the LEA only through a database and not in a hard copy, the records are still covered under the right to review and inspect clause and the digital recording forms, score reports, etc., would need to be made available for parental inspection. This scenario can be likened to discipline records available within the West Virginia Education Information System (WVEIS); the discipline records are part of the student's education records, whether or not they are printed and maintained on paper.

**7. A mother believes her son's intellectual assessment results are inaccurate and has requested the LEA permanently remove the record from the child's file. What are the district's responsibilities with respect to the parent's request and the intellectual assessment?**

FERPA and WVBE Policy 4350 afford parents the right to request that any inaccurate or misleading record **be amended**. The LEA is required to **consider** the parent's request within a reasonable amount of time. Consideration of the parent's request should be documented in writing. If the district elects to refuse the parent's request to amend the record, then the district must inform the parent of her right to a hearing as outlined in WVBE Policy 4350 and follow the appropriate subsequent requirements, if the parent opts to pursue due process. Moreover, the parent has the right to include a statement of dissent in the education record detailing the nature of the disagreement (*Effective Date: 2013, p. 9-10*).

As a matter of best practice, the school psychologist should similarly take steps to discern the source of the parent's disagreement as soon as the disagreement is expressed. In some cases, additional communication and explanation may successfully resolve a misunderstanding. In other situations, a district or school psychologist may offer to administer an additional intellectual assessment or obtain an independent evaluation to receive a second opinion prior to taking action on the contested record, as long as parent consent is obtained and the district is able to meet the aforementioned "reasonable time period." The results of a second battery are likely to better inform the district on how to handle the parent's request to amend the contested education record.

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- United States Department of Education. (1999). IDEA, Individuals with Disabilities Education Act, final regulations : 34 CFR Part 300 assistance to states for the education of children with disabilities. Federal Register.
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- West Virginia Board of Education Policy 4350: *Collection, Maintenance and Disclosure of Student Data*, (2013). Retrieved from <http://wvde.state.wv.us/policies/> .
- Please submit comments or questions for future columns to Lanai Jennings at [jenningsknot@marshall.edu](mailto:jenningsknot@marshall.edu).

# NASP 2015

## ANNUAL CONVENTION

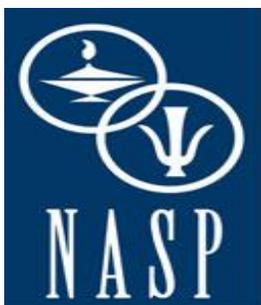
As everyone knows, this coming February, the National Association of School Psychologists will be holding their week-long national convention in Orlando, FL. This is a great opportunity for our small group from Marshall University Graduate College. Some of things we are excited to learn more about are the newest research in our field, and to train with experts on issues such as academic, behavioral, and mental health interventions; data collection and analysis; resilience and risk factors; school violence prevention; professional ethics and school law; creating positive school environments; and we will also be able to network with other school psychologists and graduate students from across the country! It's an extremely awesome opportunity for our cohort to attend this convention and it doesn't hurt that it's also at Disney World. Unfortunately, going to the convention can be quite costly. **We are trying to raise funds to cover our hotel accommodations, registration fees for the convention, and plane tickets – a total of over \$1,100 per person.**

One of the ways we are raising funds is through the company Scentsy from now until October 30<sup>th</sup>. They offer a selection of tarts, tart warmers, room fragrances, soaps, lotions, car fragrances, and laundry scents. To view the online brochure & order, you can visit: <http://angelagregory.scentsy.us>  
To support our fundraiser, you must select **“MU Psychology Fundraiser”**, when given the option to support a cause.

We will also be doing more fundraisers such as Avon and Buffalo Wild Wings fundraiser nights (for those in the Charleston area).

If you are interested in just making a donation, we have a GoFundMe account set up just for that at [www.gofundme.com/aof5b4](http://www.gofundme.com/aof5b4). You can also contact Tignor4@marshall.edu if you would like to make a donation by check.

**Thank you very much for your support!**



**NATIONAL  
ASSOCIATION OF  
SCHOOL  
PSYCHOLOGISTS**

**M MARSHALL  
UNIVERSITY**

## WVSPA Executive Board

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## Awards Criteria

**West Virginia School Psychologist Of The Year Award** is in recognition of an individual's exemplary provision of school psychological services.

**Exemplary Program in the Delivery of School Psychological Services Award** is in recognition of implementation of innovative practices or programs by an individual or county school system.

**Chloe Hollinger Award** is in recognition of an individual who has promoted school psychology in West Virginia through such things as publications, presentations and overall leadership.

**Special Friends of Children Award** is presented to a person who has demonstrated outstanding dedication to the children in West Virginia and has shown a commitment to the profession of school psychology.

**Government & Public Relations Award** is presented to a person who has demonstrated leadership in government and public relations.

WVSPA takes pride in recognizing our members each year for outstanding contributions to the field of School Psychology. We want nominations from our WVSPA members. Please review the criteria for each of the awards. Request a nomination form and complete it. Return the completed form to Jennie York.

## Join WVSPA

### Membership Categories

**REGULAR** ó Available to those currently certified by the State Department of Education, or persons who hold a current license in school psychology granted by the WV Board of Examiners of Psychologists. Fee \$50.00 annually

**STUDENT** ó Available to those actively enrolled in a psychology training program, taking a minimum of six semester hours. Student membership status is granted for no more than five years, requires annual verification from the University where they are enrolled, and is not granted to any person employed full time. Fee \$25.00 annually

**RETIRED** ó Available to persons holding regular membership for at least five consecutive years and who retired from professional activity. No fee, but requires annual application.

**ASSOCIATE** ó Available to those having at least a bachelor's degree and who have an interest in school psychology. Fee \$15.00 annually.

Dues are assessed on or near July 1st of each year. New and student members may be required to complete additional forms before membership is accepted. Please make checks payable to: WVSPA. Mail to:

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