

Call to Action: Clarify Application of FERPA to State Longitudinal Data Systems

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There is an expectation that policymakers and education leaders at all levels are working collaboratively to improve system performance, and ultimately, student achievement and outcomes. The nation can no longer afford an education system that fails to use data effectively to guide decisionmaking in support of these goals.

Over the last five years, states have made significant progress implementing statewide longitudinal data systems (SLDS) to collect, store, link and share student-level data to provide the information and tools needed to meet the needs described above. From the outset of this work, states and the many national organizations supporting their efforts recognized that while building and using these indispensable data systems are important for policy, management, and instructional decisions that focus on individual success, these needs must be balanced with appropriate protections for the privacy of student records.¹

With that necessary balance in mind, states have consistently asked for clarification from the federal government around the application of the federal Family Educational Rights and Privacy Act (FERPA) to these data systems. The 1974 law was enacted to protect the privacy of student education records and applies to all schools that receive funds under an applicable program of the US Department of Education. However, in the 30 years since FERPA was enacted, the data landscape and the state role around data collection, sharing and use has changed, which has raised new issues about how states' sharing and use of longitudinal data relates to student privacy protections.

A lack of clarity and consistency in the interpretation of FERPA has created some uncertainty, and to entities and individuals being denied appropriate access to educational data under the sometimes mistaken assertion that sharing the information would be "in violation of FERPA." The provision of piecemeal guidance by the U.S. Department of Education (ED) in response to specific questions raised by states has forced many states to continue to spend scarce resources of time, energy and money to seek clarification on FERPA's application in their state. In some states, the governance structure and legal interpretation of FERPA's application has led to the successful sharing of critical information across their P-20 and/or workforce system. As a result, these states are better poised to understand and develop effective solutions to critical policy issues like college and career readiness, dropout prevention, and teacher effectiveness. However, many states continue to report lack of clarification around FERPA as a barrier to implementing policies to share data in pursuit of state policy goals and to meet their data policy obligations under the American Recovery and Reinvestment Act (ARRA).

The Data Quality Campaign (DQC) and its partners continue to raise four areas of ongoing confusion, and call on federal policymakers to address them. These clarifications would not weaken privacy rules, but rather provide clarity to a confusing and outdated law.² Given DQC's mission as a national, collaborative effort to encourage and support state policymakers to improve the availability and use of high-quality education data to improve student achievement, these recommendations focus on a narrow set of issues specifically related to the relationship between FERPA and state administration of statewide longitudinal data systems.

Clarifying and enforcing FERPA is only one piece of the puzzle; it is also critical that states implement strong policies and practices, in line with best practice from other sectors, to protect the privacy, security, and confidentiality of student information. Resources regarding these state actions can be found on the DQC's website.³

Using data to improve student outcomes and protecting the privacy, security, and confidentiality of student information are not mutually exclusive goals. Policymakers and stakeholders at all levels must ensure that there is an appropriate and effective balance between the use of data to inform policy decisions and robust policies and practices that protect the privacy, security and confidentiality of personally identifiable data.

SUMMARY OF ISSUES REQUIRING CLARIFICATION

Following the release of final FERPA regulations in December 2008, the DQC and its partners called on federal policymakers to clarify the following outstanding issues regarding FERPA's application to statewide longitudinal data systems:

Issue 1: Sharing between separate P/K-12 and postsecondary data systems

The preamble to the FERPA regulations (while not legally binding) suggests limits on data sharing between these systems based on the level of education to be evaluated or audited, a position that seems inconsistent with the statute. Sharing limited, pertinent student information can provide vital two-way feedback on student preparation for success and on alignment of systems and expectations. Many states need clarity on this issue to address requirements of the American Recovery and Reinvestment Act.

Proposed solution: ED should issue new guidance clarifying that disclosures to a SLDS for evaluation or audit are not limited to evaluations or audits at the level of education of the educational agency or institution or data system from which the records are obtained.

Issue 2: Disclosures to a Former School/LEA for Evaluation/Accountability

The preamble also expressly prohibits postsecondary institutions or data system from disclosing personally identifiable information on student postsecondary performance (such as the need for remedial courses, academic progress, etc.) back to the student's former high school or school district for evaluation or accountability purposes. Limited, pertinent information about students' postsecondary success is critical for schools, districts, and states to improve efforts graduate students ready for college and careers. While personally identifiable data is necessary to link the data across systems, only a limited number of system managers need to have access to personally identifiable information during the matching process. The postsecondary feedback reports provided to stakeholders of the linked data can gain value in its analysis and use without necessarily requiring use of personally identifiable data.

Proposed solution: ED should issue new guidance clarifying that postsecondary institutions may disclose education records back to a student's former school or LEA for the purpose of evaluating the school/LEA or holding it accountable based in part on the performance of its former students.

Issue 3: Research Studies

The regulation's narrow interpretation of the law creates unnecessary limitations on SEA's abilities to share student data for purposes of research. States must be able to maximize information from the statewide data to answer priority questions determined by stakeholders.

Proposed solution: ED should revise the regulations to permit SEAs to enter agreements for studies to improve instruction (and disclose education records under the agreement) with research organizations, subject to safeguards in the agreement to protect records' confidentiality.

Issue 4: Disclosures to Workforce and Social Service Agencies

FERPA does not generally authorize disclosures of education records to workforce and social service agencies for purposes served by those agencies; such as to evaluate or strengthen workforce or social services. The regulations could not legally solve the broad problem that FERPA does not generally authorize disclosures of education records to work force and social services agencies for non-education purposes.

Proposed solution: Congress should a) amend FERPA to authorize disclosures of education records, consistent with state law, to employment and social service agencies responsible for serving students or former students, or for maintaining records for them, for the purposes of evaluating and strengthening their services, evaluating education programs, and enhancing collaboration between education, workforce, and social service agencies in serving students and clients; and b) include in the amendment provisions to safeguard disclosed information, including state law provisions or inter-agency agreements that limit the purposes for which the information may be used, as well as the employees or contractors who have access to the information based on a need to know to carry out those purposes, and include administrative and electronic processes to avoid careless or wrongful disclosures.