

Further Clarification Requested by States Around the Application of FERPA To State Longitudinal Data Systems

Statewide Longitudinal Data Systems (SLDS) provide the information and tools needed to inform policies, practices and decisions at every level to improve student achievement and system performance. It is equally important that there are policies and practices to protect personally identifiable information and to ensure the confidentiality and security of this sensitive information. Linking limited data elements from different sectors is sometimes necessary to generate actionable information that can be used to realize efficiency, assess impact, and make informed decisions about education. States must take deliberate and thoughtful action to prioritize privacy and security based on generally agreed upon practices and safeguards for sharing and protecting personally identifiable information while they are improving their SLDSs to provide better information to stakeholders throughout the P-20/Workforce systems. As states build data-informed education sectors, they have consistently asked for clarification from the federal government around the application of the Family Educational Rights and Privacy Act (FERPA) to these data systems.

Some states have been able to successfully link and share key information across their P-20/Workforce systems given their governance structure and legal interpretation of FERPA's application. As a result, these states are better poised to understand and develop effective solutions to critical policy issues like school readiness, college remediation, and workforce productivity. However, the provision of piecemeal guidance by the U.S. Department of Education in response to specific questions raised by states based on interpretations of this 1974 law 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.

Based on state experiences, comments, and ongoing conversations, the Data Quality Campaign (DQC) Partners have identified the following four areas of continuing confusion:

Issue 1: Sharing between Separate P-(or K-12) and Postsecondary Data Systems The preamble to the FERPA regulations suggests that disclosures for evaluation are limited to evaluations of programs of the disclosing agency, a position that seems inconsistent with the statute. States need confirmation that limited, pertinent student information can be connected from K-12 to postsecondary and back to provide vital two-way feedback on student preparation for success and on alignment of systems and expectations. In particular, without this clarification, states will be prevented from implementing mandates in the American Recovery and Reinvestment Act (ARRA) to measure the effectiveness of LEAs and secondary schools in preparing students for college and careers.

Issue 2: Disclosures to a Former School/LEA for Evaluation and Accountability States need clarity on the ability of postsecondary institutions, or data systems acting on their behalf, to disclose education records to a student's former school or LEA for the purpose of evaluating the school or LEA or holding it accountable based in part on the performance of its former students. States need the ability to evaluate how well the district or school prepared its students for college and to evaluate the effectiveness of different schools, courses, and preparation approaches. While student level identifiable data is required in order 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 majority of stakeholders of the linked data can gain value in its analysis and use without necessarily requiring use of personally identifiable data.

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Issue 3: Research Studies Initiated by State Agencies States need clarification that state education agencies (not just schools – including postsecondary institutions – or local educational agencies (LEAs)) are able to enter into agreements with and disclose education records to research organizations for studies to improve instruction, on behalf of schools and LEAs in their state, subject to safeguards in the agreements to protect the confidentiality of the records. This research allows states to use statewide data to strategically answer the priority questions in their state as deemed necessary by a state governing body working in partnership with other stakeholders, including districts and schools.

Issue 4: Disclosures to Workforce and Social Service Agencies States need clarification regarding whether FERPA authorizes disclosures of student 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.

These issues demonstrate the lingering uncertainty that exists regarding with whom data can be shared, by whom, and for what purpose. There is an opportunity to work with Congress and the Administration to address this confusion in upcoming guidance, regulation and/or statutory changes. Over the next few months the DQC Partners will work with state policymakers to ensure that privacy and security, including better understanding and application of Fair Information Practice Principles and other best practices, are an integral part of their strategies to build SLDSs in their states.

For more information on how FERPA applies to state data systems, read [Maximizing the Power of Education Data While Ensuring Compliance with Federal Student Privacy Laws: A Guide for Policymakers](#), and for specific recommendations on how to provide clarification to the listed issues, read the DQC's publication [Needed Changes in FERPA Not Addressed in Final Regulations](#).

For more resources on how states are linking and sharing data while protecting personally identifiable information and ensuring the confidentiality and security of this sensitive information, visit www.DataQualityCampaign.org/resources/topics/13.

For more information on the generally accepted Fair Information Practice Principles, visit www.ftc.gov/reports/privacy3/fairinfo.shtm.