IPEDS XML Upload as PESC Approved Standards

On April 29, 2008, the National Center for Education Statistics (NCES) submitted a Letter of Intent to PESC notifying PESC and the education community of its intent to develop XML Upload schemas and have them approved by PESC as standards. As NCES is the sole owner and recipient of IPEDS data, certain requirements in PESC’s approval process are already satisfied. NCES has already developed the XML Upload schemas and they are ready to submit their core components to the CCB. After that, there’s the 30-day public comment period, the PESC member vote, then Board ratification and approval announcements. This effort marks a significant milestone for NCES, FSA, PESC and all partners in the education community as standardization of data exchange simplifies the

See IPEDS, Page 2

5th Annual Conference on Technology and Standards

The 5th Annual Conference on Technology & Standards held April 28 - 30, 2008 in Washington DC, incorporated a broad range of perspectives and focused on real solutions that are being used and implemented today. Considered a smashing success, attendees rated this conference the highest of all 5 years. Presentations from the conference are now posted on the PESC website.

Terry Young of Wright State University and Allison Rhea of Sinclair Community College receiving PESC’s 9th Annual Best Practices Competition Award for 2007. Their submission “Exchange of Electronic Transcripts via Ohio Board of Regents Articulation & Transfer Clearinghouse” received unanimous approval by the PESC

See Conference, Page 2
**IPEDS**, from Page 1

Process, eases development, saves money, while improving data quality.

Background information from the Letter of Intent:

Since its original development in the 1980s, the Integrated Postsecondary Education Data System (IPEDS) has collected institution-level data from all primary providers of postsecondary education to generate information on trends at the national, state, and institutional levels. It is the major postsecondary education data collection program within the U.S. Department of Education, and encompasses all postsecondary institutions and educational organizations, both public and private, that provide education as their primary purpose.

Sponsored by the National Center for Education Statistics (NCES), IPEDS was implemented to help NCES meet its mandate to report full and complete statistics on the condition of postsecondary education in the United States. IPEDS provides NCES with the basic data needed to describe the size of the postsecondary system in terms of students enrolled, staff employed, dollars expended, and degrees earned. As of Fall 2007, the IPEDS universe contained approximately 6,800 Title-IV participating institutions, and approximately 200 non-Title-IV institutions that participate voluntarily.

In 2000, IPEDS was redesigned to provide for web-based transmission of information, completely replacing the paper-and-pencil administration that had been used for more than a decade. The IPEDS data collection runs year-round, with a total of eight different survey components being active at different times of the year. Institutions complete the surveys via the web-based data collection system, or they can upload flat/ascii data files to complete their data submission requirements. Alternatively, they can do some of each by manually completing some survey components while uploading data for other survey components. In some cases, state agencies provide some or all of the data for many institutions within their state using the file upload option.

More information about IPEDS can be found at [http://nces.ed.gov/ipeds](http://nces.ed.gov/ipeds).

We would like to offer the IPEDS community an XML based method of uploading data, and concurrently, we would like to have our XML schemas approved by PESC for use in the postsecondary community. We will continue to offer institutions the ability to upload their data using the flat file schemas with which they are accustomed. We envision that the XML option of data submission will be used by schools who are not currently uploading data for submission, but rather by schools who will in the future participate in the surveys by submitting data via file uploads.

While the IPEDS data collection currently encompasses eight survey components, our first mission will be to have PESC approved schemas for the student based survey components: Twelve Month Enrollment, Completions, Fall Enrollment, Graduation Rates and Student Financial Aid.

**Conference**, from Page 1

Board Review Committee on the Best Practices Competition. The Best Practices Competition is held each year by PESC to promote innovation and ingenuity in the application of standards for business needs.

PESC also honored Judith N. Flink, Executive Director of University Student Financial Services and Cashier Operations at the University of Illinois, with its 2008 Distinguished Service Award. Ms. Flink is the last founding Director still active on the PESC Board of Directors and has decided not be renominated when her current term on the Board expires this June 30. “It’s been wonderful to see the higher education community working together through PESC,” Ms. Flink reflects on her tenure on the Board. “The standards we work on, from the High School and College Transcript to the Admissions Application, Test Score, and Common Record: CommonLine not only make our processes more efficient and contribute to cost-savings, they help ensure that barriers to accessing higher education are removed. It’s very important that organizations use standards and join PESC to help support the growing mission,” Ms. Flink continues.
Technology Tidbits

and Standards Snippets

New PESC Members

We welcome the following new members to PESC:

Indiana State University
Sharon Gick, Interim Registrar, is the PESC point of contact.
www.indstate.edu

University of Oregon
Jim Bouse, Associate Registrar for Technology, is the PESC point of contact.
www.uoregon.edu

Decision Academic
Barry Sexton, President & CEO, is the PESC point of contact.
www.decisionacademic.com

UT Austin Internet Server ‘SPEEDEs’ Along

March 2008 volume included:
- Total transcripts for date range: 51,966
- Total acknowledgements for date range: 41,066
- Total for code 138: 10,958
- Total for code 146: 26,245
- Total for code 189: 62,292
- Total for code 997: 17,762
- Total transaction sets for date range: 216,470

April 2008 volume included:
- Total transcripts for date range: 58,264
- Total acknowledgements for date range: 45,638
- Total for code 138: 2,794
- Total for code 146: 18,144
- Total for code 189: 73,201
- Total for code 997: 13,400
- Total transaction sets for date range: 217,471
April 29, 2008

Re: Letter of Intent

Dear Michael Sessa,

I am pleased to submit this letter to notify PESC that the National Center for Education Statistics intends to work collaboratively with the higher education community to develop the following XML standards:

- **Education Statistics** - the IPEDS ‘sector’ library.
- **Twelve Month Enrollment** - reports counts of undergraduate, graduate and first professionals by race and gender, as well as aggregate sums of credit hours and/or contact hours during the reporting period.
- **Fall Enrollment** – reports counts of fall enrollment by enrollment status (full time/part time), student level, degree-seeking status, retention status, by race, gender and age.
- **Completions** – reports counts, by race and gender, of completed degrees or certificates by type of degree/certificate and by CIP code.
- **Graduation Rates** – reports counts, by race and gender, of completed degrees for bachelor-seeking and non-bachelor-seeking cohorts, by the time it took to complete the degree. Also contains race/gender counts of those who did not complete degrees.
- **Student Financial Aid** – reports counts of total undergraduates, total full-time first-time students, by residency. Also reports numbers and average aid amounts of grant and loan recipients, by state and local, federal, and institution-based types of grants and loans.

Since its original development in the 1980s, the Integrated Postsecondary Education Data System (IPEDS) has collected institution-level data from all primary providers of postsecondary education to generate information on trends at the national, state, and institutional levels. It is the major postsecondary education data collection program within the U.S. Department of Education, and encompasses all postsecondary institutions and educational organizations, both public and private, that provide education as their primary purpose.

Sponsored by the National Center for Education Statistics (NCES), IPEDS was implemented to help NCES meet its mandate to report full and complete statistics on the condition of postsecondary education in the United States. IPEDS
provides NCES with the basic data needed to describe the size of the postsecondary system in terms of students enrolled, staff employed, dollars expended, and degrees earned. As of Fall 2007, the IPEDS universe contained approximately 6,800 Title-IV participating institutions, and approximately 200 non-Title-IV institutions that participate voluntarily.

In 2000, IPEDS was redesigned to provide for web-based transmission of information, completely replacing the paper-and-pencil administration that had been used for more than a decade. The IPEDS data collection runs year-round, with a total of eight different survey components being active at different times of the year. Institutions complete the surveys via the web-based data collection system, or they can upload flat/ascii data files to complete their data submission requirements. Alternatively, they can do some of each by manually completing some survey components while uploading data for other survey components. In some cases, state agencies provide some or all of the data for many institutions within their state using the file upload option.

More information about IPEDS can be found at http://nces.ed.gov/ipeds.

We would like to offer the IPEDS community an XML based method of uploading data, and concurrently, we would like to have our XML schemas approved by PESC for use in the postsecondary community. We will continue to offer institutions the ability to upload their data using the flat file schemas with which they are accustomed. We envision that the XML option of data submission will be used by schools who are not currently uploading data for submission, but rather by schools who will in the future participate in the surveys by submitting data via file uploads.

While the IPEDS data collection currently encompasses eight survey components, our first mission will be to have PESC approved schemas for the student based survey components: Twelve Month Enrollment, Completions, Fall Enrollment, Graduation Rates and Student Financial Aid.

Sincerely,

Elise Miller
May 9, 2008

Elise Miller
IPEDS Program Director
National Center for Education Statistics
U.S. Department of Education
1990 K Street, N.W. Room 8133
Washington, DC 20036

Dear Ms. Miller,

Thank you for your submission dated April 29, 2008 to the Postsecondary Electronic Standards Council (PESC) of the Integrated Postsecondary Education Data System (IPEDS) XML Upload developed through the National Center for Education Statistics (NCES) of the U.S. Department of Education. As stated, your objective is that the IPEDS XML Upload become a PESC approved and recognized education standard.

As NCES is the sole owner and recipient of IPEDS reporting, certain steps within PESC’s approval process are therefore already satisfied. The next applicable step is submission of the core components to the Change Control Board (CCB) for review and approval. I will notify the CCB of this forthcoming effort.

Once approved by the CCB, the IPEDS XML Upload will then be issued for 30-day public comment whereby comments will be submitted to the PESC office and routed to your attention to address and resolve in cooperation with the CCB. Once the public comment period is completed and all issues are addressed resolved, PESC will then present the IPEDS XML Upload for a vote of approval by PESC members. The final steps are ratification by the PESC Board of Directors, posting of all documentation to the PESC website, and communications.

I appreciate the work that has been done here by NCES and I believe that students and institutions will benefit from continued collaborations and stronger partnerships between NCES, the U.S. Department of Education, PESC and the higher education community.

As always, I look forward to working with you and the U.S. Department of Education in the future. If you have further questions or concerns, please contact me directly at 202-261-6516 or at michael.sessa@pesc.org.

Sincerely,

Michael Sessa

Michael Sessa
Executive Director
PESC
May 7, 2008

Mr. LeRoy S. Rooker, Director  
Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Room 6W243  
Washington, D.C. 20202-5920

Re: Proposed Amendments to FERPA Regulations

Dear Mr. Rooker:

This letter is to provide comments and recommendations in response to the notice of proposed rulemaking published in the Federal Register of March 24, 2008. The notice proposes to amend regulations for the Family Educational Rights and Privacy Act (FERPA). These comments and recommendations are submitted by the organizations listed that are assisting states with the implementation of statewide longitudinal data systems consistent with principles advocated by the national Data Quality Campaign.¹

The heart of our concern is that FERPA not be interpreted to impair the capacity of states to use or permit appropriate use of statewide data for education research and evaluation on behalf of all schools, educational institutions, and educational agencies in the state. There is a consensus among policy makers at the federal, state, and local levels and in the education community as to the critical importance of sharing and using statewide student information in order to improve academic achievement and close the achievement gap.

While the proposed regulations include some provisions that have potential to address that goal, we are very concerned that other provisions in both the current and proposed FERPA regulations, if unchanged, appear to have the effect of nullifying that potential benefit. Those provisions, moreover, would invalidate practices of the U.S. Department of Education (USED) itself in sharing student data derived from federal evaluations to promote education research.

The development and implementation of state longitudinal data systems that use and appropriately share statewide student data for education research and evaluation for the benefit of educational agencies and institutions throughout a state is recognized in almost all the states, and as a matter of federal policy, as an indispensable foundation for

¹ The Data Quality Campaign is a national, collaborative effort to encourage and support state policymakers to improve the collection, availability, and use of high-quality education data and to implement state longitudinal data systems to improve student achievement. The managing partners of the Data Quality Campaign include Achieve, Inc.; Alliance for Excellent Education; Council of Chief State School Officers; Education Commission of the States; The Education Trust; National Association of State Boards of Education; National Association of System Heads; National Center for Educational Accountability; National Center for Higher Education Management Systems; National Governors Association Center for Best Practices; Schools Interoperability Framework Association; Standard & Poor's School Evaluation Services; State Educational Technology Directors Association; and State Higher Education Executive Officers.
supporting education reform. These data are needed in order to track the progress and needs of students; plan and implement education programs and supports for individual students; identify programs and strategies that are effective in raising academic achievement and closing the achievement gap; and hold schools and education agencies accountable for performance in realizing these goals.

Over the past several years, organizations participating in the Data Quality Campaign have heard repeatedly from many states that FERPA, as interpreted and applied by the USED, has been a significant obstacle to the development and functioning of state longitudinal data systems to serve these purposes. Neither members of the Data Quality Campaign nor the states have sought to water down privacy protections for students under FERPA. Rather, the concern has been that, while FERPA was not intended to deny use of student data for research and evaluation needed to provide access to educational opportunities and to improve the quality of education, and on its face authorizes disclosures that in effect can harmonize privacy protections with other vital needs in education, these authorized disclosures have been interpreted so narrowly as to nullify their utility in meeting these needs, particularly in the context of state data systems. In effect, federal policy has been at war with itself, as FERPA has been interpreted to impair other federal policies supporting research in education, evidence-based education programs, state accountability systems under the No Child Left Behind Act, and federal grant support for state longitudinal data systems.

Provisions that Potentially May Support Essential Functions of State Data Systems

The proposed regulations include two provisions that have the potential to facilitate effective use of data by state longitudinal data systems without sacrificing the privacy protections in FERPA. These proposed provisions would—

- Provide that state education officials (which we understand would include officials responsible for oversight of state longitudinal education data systems) may redisclose personally identifiable information from education records for purposes authorized in FERPA, thus obviating the need "for the [requesting] party to go to each school district or institution that submitted the records" to the state. (73 Fed. Reg. at 15587; Proposed §99.35 (b) (1)).

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2 In response to many inquiries, rather than seeking to harmonize these interests, USED's answer has been that student data could only be used to meet the stated educational need by obtaining written approval from the parent of each student or by using only anonymous or de-identified data. While these certainly are options under the law that should be used where practical, individual parental authorization often is impractical in using state-level data for research and related purposes, and limiting research to use of de-identified data may often undermine the usefulness and reliability of research in answering a study's questions.
Interpret the statutory provision that an authorized disclosure of data for a study to improve instruction must be “for, or on behalf of,” an educational agency or institution to mean that there must be an agreement between the educational agency or institution and the research organization specifying the purposes of the study and that the disclosed student records may be used only to meet those purposes, as well as including other FERPA restrictions. (Proposed §99.31(a)(6)). These provisions would reverse the prior, overly restrictive interpretation of USED that disclosures could not be made for studies initiated by the research organization. The preamble also indicates that the agreement would serve to assure that – consistent with the FERPA statutory language that the study is “for, or on behalf of,” an educational agency or institution – the disclosing agency agrees with the purposes of the study (but need not agree with its results or conclusions) and retains control of the information from education records that is disclosed.

However, these proposed changes will have little or no benefit in accommodating the functions of state education data systems if state officials overseeing these systems –

? may not enter the proposed agreements for studies that would use data maintained by the state system; and

? may only make a redisclosure of information for the research study if the redisclosure was recorded by the educational agency or institution at the time of its initial disclosure of education records to the state.

Both the current and proposed regulations appear to be problematic on these points. Proposed §99.31(a)(6) provides only for an educational agency or institution to enter the research agreement, and USED has interpreted the terms "educational agency or institution" to refer to schools, higher education institutions, or local educational agencies that directly serve or control services to students, not to officials who administer state education functions. (See 34 CFR §§99.1(a); 99.10(a)). No express provision is included in the proposed regulations for state education authorities to enter the proposed research agreements.

Similarly, for any redisclosure by state education officials (or by the Comptroller General of the United States or the U.S. Secretary of Education), of personally identifiable information that they obtain for evaluation or audit of federal or state-supported education programs, the proposed regulations authorize redisclosures subject to §99.33(b) of the current regulations. That subsection permits an educational agency or institution to disclose personally identifiable information with the understanding that the receiving

5 The subject FERPA provision, subsection (b)(1)(F) (section 444 (b)(1)(F) of the General Education Provisions Act), authorizes disclosures to organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction. Consistent with its mission, DQC comments focus on the latter purpose, but apply to all.
party (here, state education officials or the noted federal officials) may make further disclosures authorized in FERPA on behalf of the educational agency or institution, subject to §99.32(b) of the current regulations, which requires the record of the initial disclosure to include the names of the additional parties to which the receiving party may disclose the information on behalf of the educational agency or institution and the legitimate interest in the information of each additional party. These provisions are somewhat ambiguous but could be read to require that recordations of any redisclosures must be anticipated and included in the recordation at the time of the initial disclosure and, in effect, approved by the educational agency or institution.

Need for Changes in the Regulations

The most compelling reason why state data systems should be permitted to disclose personally identifiable information from student records on behalf of educational agencies and institutions in their state, in the aggregate, is to permit use of those records for research that needs to rely on statewide data and that benefits multiple educational agencies and institutions in the state. State data systems may perform some of this research directly or through state-funded contracts, but it is critical that the data be available for research conducted by third parties that the state itself may lack funds to support. Interpretations of FERPA that do not permit state education data officials to enter agreements for research or that require them to have disclosures for research purposes recorded (and, in effect, approved) by educational agencies and institutions at the time of the initial disclosure of the information to the state, would thwart these purposes. They would have the effect of nullifying the principal benefits of the proposed changes described above.

It is plainly impractical to have research agreements with third parties to use statewide student data obtained from education records approved by each of the hundreds or thousands of educational agencies and institutions in a state from which the information is obtained. That defeats a core purpose of a state longitudinal data system: to determine and authorize research studies that are for the collective benefit of educational agencies and institutions in its state. It is likewise unrealistic to anticipate future disclosures by the state data system, for example, for research studies proposed in the future. A requirement that the recordation of the original disclosure include specific information on the recipients and purposes of all further disclosures undermines the ability of a state data system to identify research proposals that are of critical importance to the state, but that did not exist or were not anticipated at the time of the initial disclosure by the educational agency or institution to state officials.

Moreover, it is unworkable and inconsistent with the purported purposes of the proposed changes described above, as explained in the preamble, to require that a state educational agency or state data system must secure approval of each authorized disclosure from the hundreds or thousands of educational agencies or institutions from which the records were obtained. That requirement is also inconsistent with the purposes of having state data systems – which are created under state law for the precise purpose of enabling use
of statewide data to meet the collective needs of educational agencies and institutions throughout the state.

Because these provisions would apply not only to redisclosures of information obtained for evaluation purposes by state education officials, but also to redisclosures of such information by the Comptroller General of the United States or the Secretary of Education, interpretations that each research agreement must be entered by the educational agency or institution, or that each redisclosure must be approved and recorded by the educational agency or institution, and at the time of initial disclosure, would invalidate longstanding practices of USED itself, through the Institute of Education Sciences (IES), to license use of personally identifiable data subject to FERPA by research organizations without regard to such requirements. 4

The FERPA statute permits State Education Authorities to Authorize Studies and Make Disclosures for the Studies On Behalf of Educational Agencies and Institutions

There is nothing in FERPA to preclude state education officials who administer the state longitudinal data system from entering research agreements with organizations to perform research studies and from redisclosing personally identifiable information to be used in such studies – and recording such redisclosures at the time they are made – on behalf of (and without having to obtain the permission of) educational agencies and institutions in their state. Student privacy is not harmed when state education officials take these actions on behalf of educational agencies and institutions. “The Secretary recognizes that [state education] officials . . . that receive education records . . . are no less capable of protecting the information against unauthorized access and disclosure than [other] parties that receive education records under other exceptions. . . .” (73 Fed. Reg at 15587).

The notion implicitly underlying regulatory provisions that each educational agency and institution must control each of these decisions and actions is not compelled by FERPA

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4 IES, like state education agencies, is subject to FERPA with regard to student education records that it obtains for federal research or evaluation. (Section 183(b) of the Education Sciences Reform Act of 2002 (ESRA)). Also, the same FERPA provision authorizes disclosures of education records to state education officials and to the Secretary of Education and Comptroller General of the United States for evaluation and audit of federally supported education programs. IES has a longstanding practice of licensing use of those records by third party organizations for research, without obtaining the approval of each educational agency or institution from which the data are obtained. (http://nces.ed.gov/StatProg/instruct.asp)

We understand that USED views IES's licensing agreements to be authorized by Section 183(d)(3) of ESRA. We support IES's practice of authorizing use of education records through licensing agreements. However, we do not believe that Section 183(d)(3) of ESRA separately authorizes such agreements. It applies by its terms to utilization of temporary staff from other agencies and organizations to assist in performing the responsibilities of the Director of the Institute of Education Sciences, and subjects them to confidentiality provisions under Section 183. It does not provide for agreements to authorize use of education records for studies by other organizations. Legally, state education officials are on the same footing as IES with regard to the education records that they obtain from educational agencies and institutions for evaluation, audit, and compliance purposes. If IES may enter agreements with research organizations to use education records for legitimate studies, it follows that state educational authorities may do the same.
and is out of touch with today's education data systems and needs. Indeed, these interpretations make FERPA flatly inconsistent with the need to use statewide student data, often in personally identifiable form, for research, except by a State education agency itself or its contractor. As a practical matter, the only other education research requiring use of personally identifiable student data that could be authorized would be research using the data of a particular (or small group of) educational agencies or institutions. A vital function of state longitudinal data systems would be effectively repealed by FERPA, as interpreted by USED. In reality, a core purpose of state longitudinal data systems is to conduct or authorize use of data for studies for, or on behalf of, educational agencies or institutions in the state, unquestionably aligned with the express FERPA provision authorizing disclosures for research studies.

As a legal matter, there are several alternative bases (each adequate in itself) for revising the regulations to permit state education authorities to authorize studies and make and record redisclosures of personally identifiable information from education records for this purpose:

- FERPA simply does not bar a state education authority from authorizing a study to improve instruction, disclosing education records that it maintains, on behalf of educational agencies and institutions, in the aggregate, in the state, and recording redisclosures for such studies at the time they are made. FERPA does not require an educational agency or institution to make or approve the recordation of a disclosure. Rather, the law requires each educational agency and institution to "maintain a record" of the disclosure (and of requests for disclosure). There is nothing in the law that prevents a state education authority from making the recordation, maintaining it for affected educational agencies and institutions, and providing it – either automatically or upon parental request for access – to the educational agency or institution for purposes of parental access. Nor does any provision in the law bar a state education authority from determining that a study is “for, or on behalf of” one or more educational agencies or institutions in the state, which is a core function of officials overseeing state longitudinal data systems under state law.

- Alternatively, the state data system generally could be understood to be acting for educational agencies and institutions in maintaining their education records for statewide evaluation and research performed for the benefit of all educational agencies and institutions in the state. In that event, a disclosure by the state

5 State education officials may be viewed simply as exercising the function of maintaining recordations on behalf of schools or LEAs, with regard to disclosures that they make from the state data system, consistent with their state statutory role in maintaining and using statewide data obtained from student education records.

6 Legally, this theory could apply to postsecondary institutions as well as K-12 educational agencies and institutions. However, given the importance of the issue of autonomy to many postsecondary institutions, it is generally less likely that states will deem a state data system to be acting for a postsecondary institution in maintaining its records.
education authority to a third party would be no different from an initial disclosure by the educational agency or institution itself, and the state education authority, in its capacity for maintaining education records for the educational agency or institution, could enter agreements with other organizations for authorized studies.\(^7\) This approach is consistent with FERPA’s definition of education records as including records maintained by a person acting for a school or LEA.\(^8\) Other provisions of the proposed regulations regarding outsourcing of data functions by an educational agency or institution may be read to propose barring this approach, by providing that the party to which the functions are outsourced should be under the direct control of the educational agency or institution. That makes no sense for a state agency that maintains data for the educational agency or institution as part of a statewide data system.\(^9\)

While it is unnecessary to make this significant a change in order to address our concerns, the proposed regulations may be revised to redefine “educational agency or institution” to include state education agencies. Such agencies come within the literal definition of an “educational agency or institution” in FERPA: "any public or private agency or institution which is the recipient of funds under any . . . program [administered by the Secretary of Education]."\(^10\) Indeed, when Congress amended FERPA in 1994\(^11\) to require state educational agencies to provide parental access to records maintained by them, it applied this provision, "whether or not that agency is an educational agency or institution under this section," implicitly recognizing that a state educational agency may be an "educational agency or institution," as used in FERPA. However, if it made this

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\(^7\) Under this theory, no recordation would be required when the education record is given to the state because the state data system, consistent with state law, may be deemed to be maintaining the education records for the educational agency or institution, and the disclosure of information to the state is no different from a disclosure to an official within the educational agency or institution, or to one of its contractors. It follows that a disclosure of that information to another party by the state data system is no different from an initial disclosure by the educational agency or institution itself. In that case, the state educational agency, as the custodian of education records on behalf of educational agencies and institutions, would make a recordation of an initial disclosure when it provided personally identifiable information from those records to a third party.

\(^8\) Subsection (a) (4)(A) of FERPA.

\(^9\) Under this approach, states would need to review their own state law, regulations, and guidelines to ensure that they may be deemed to be maintaining education records for educational agencies and institutions in their state. They would also need to ensure clarity in the roles and responsibilities as between the state and educational agencies and institutions for protecting the privacy of student records, and take steps to ensure that educational agencies and institutions inform parents (in their annual FERPA notice to parents) of the role of the state data system in maintaining records on their behalf, of the categories of state data officials who will have access to the records, and of the allocation of responsibilities between the state and the educational agency or institution for implementing FERPA procedures and rights.

\(^10\) Subsection (a)(3) of FERPA.

change, USED would need to issue revised regulations addressing the allocation of functions under FERPA between states, on the one hand, and local agencies and individual institutions, on the other, in order to foster parent accessibility and avoid greatly expanded, costly, and duplicative administrative burdens on the states. For example, it would make sense for parent access and procedural rights relating to records maintained by the state, including access to recordations of disclosures and annual FERPA notices to parents, to be managed at the school or local district level.

? Another possible option, apart from applying the provisions authorizing disclosures to organizations for research studies, would be to regard research organizations that enter agreements with state education authorities as "authorized representatives" of state education authorities who may receive personally identifiable data for the purpose of evaluating federal and state supported education programs, pursuant to such agreements. However, this option would be effective only if, as recommended below, USED revises its position that an authorized representative must be under the direct control of the state education authority.

Recordation Issue Raised by USED

On the issue of recordation, USED appears to signal possible flexibility in the preamble to the proposed regulations by expressing interest in relieving burdens associated with recording disclosures, with specific regard to redisclosures by state education officials, the Comptroller General, and the Secretary of Education. The preamble specifically invites public comment on whether these agencies and officials should be allowed to maintain the record of the redisclosure they make on behalf of an educational agency or institution. With specific regard to the state redisclosure issue, the preamble also discusses the capability of state education officials to protect the information against unauthorized disclosure and permitting state education officials to redisclose personally identifiable information from education records without requiring the party seeking the information to go back to each educational agency or institution. Taken together, these preambulatory statements clearly imply that educational agency and institution approval is not required for each redisclosure and that every redisclosure need not be recorded at the time the initial disclosure is made to the state.12

12 In discussing the financial costs and benefits of the proposed regulation, as required by Executive Order 12866, the preamble to the proposed regulations indicates that the proposed regulations would allow state educational authorities (as well as the Secretary of Education and Comptroller General) to maintain the recordation of redisclosure, so long as access to the recordation is provided to parents and eligible students by either the state educational authority or the educational agency or institution. 73 Fed. Reg. 15596 (March 24, 2008). That would be consistent with our recommendation. However, this discussion is inaccurate and contrary to the terms of the proposed and current regulations and the separate substantive discussion of these provisions provided in the preamble, including the specific invitation of public comment referenced in the text above. While there is no certain explanation for this inconsistency, it would appear that USED had (at some point) intended to propose the position that recordations of redisclosures could be made and maintained at the state level; changed that position in the published proposed regulations; and simply failed to make a conforming change in the discussion under the Executive Order 12866 section of the preamble.
As noted, we believe this raises a more fundamental issue than that of data burden. For the reasons indicated above, it is critical that redisclosures by state education authorities not have to be approved by each educational agency or institution and not have to be recorded at the time of initial disclosure. We have no objection to a requirement that a disclosure or redisclosure be recorded by a state education authority at the time it is made, and we believe it makes sense, and will reduce burden, for the state educational agency or data system (as well as for the Secretary of Education and Comptroller General) making the redisclosure to maintain a record of the redisclosure and forward it to the individual school or local agency at such time as a parent requests access to recordations of disclosures for his or her child.

Recommended Changes

For the reasons described above, we strongly recommend that—

? proposed §99.31(a)(6) be revised in the final regulations to permit a state education agency or authority to enter an agreement with an organization for a study and disclose personally identifiable information for purposes of that study maintained by the state education agency or authority; and

? the final regulations revise proposed §99.35(b)(1) and/or §§99.32(b) & 99.33(b) of the current regulations to authorize a state education agency or authority to make further disclosures of personally identifiable information received from educational agencies or institutions and to record those redisclosures at the time they are made.

Destruction of Personally Identifiable Information When No Longer Needed (Proposed § 99.31(a)(6)(ii)(C); current § 99.35(b)(2)).

FERPA provides that personally identifiable information provided to state education officials for evaluation, audit, or compliance purposes, or to other organizations for studies to improve instruction, shall be destroyed when no longer needed for these purposes. Proposed § 99.31(a)(6)(ii)(C) provides that the agreement for a study must provide that the information is destroyed or returned to the educational agency or institution when no longer needed for the purposes for which the study was conducted. Current § 99.35(b)(2) similarly requires that information be destroyed when no longer needed for evaluation, audit, or enforcement of federal or state supported education programs.

Clarification is needed, either through an amendment to the final regulations, or through guidance in the preamble to the final regulations, that these provisions do not require destruction of data sets that include information from student records as initial analysis of a study or discrete evaluations are completed. State longitudinal data systems are designed to provide for evaluation and research using longitudinal data over extended
periods of time. Also, an interpretation that student information used in a research study must be destroyed when initial analysis is completed is highly problematic because it undermines research that uses student records. Over the past several decades, scientific methodology has come to recognize that a single study can only very rarely answer a scientific query due to sampling variation, measurement error, differences in treatment implementation, and so on. As recognized in numerous reports by the Committee on National Statistics (CNSTAT), the National Academy of Sciences and others, ongoing access to data is a fundamental part of the scientific process for several reasons, including to detect errors in analyses or research misconduct; to allow replication of studies; to allow analyses of issues that were not evident when the study was initially designed, including secondary analyses; to allow rigorous research syntheses across multiple studies (e.g. by pooling the results of multiple analyses or meta-analyses); and to minimize the risks to privacy, burden on respondents, and cost to tax payers by using existing data rather than “reinventing the wheel” by conducting studies that have already been done.

The importance of ongoing access to data for research purposes is recognized by other privacy protection statutes and regulations, such as HIPAA and the Common Rule, that do not require destruction of research data upon completion of the study, even when the study includes private and potentially sensitive information. FERPA does require destruction (or return) of the information, but that requirement needs to be reasonably interpreted so as not to frustrate these research needs, in particular to facilitate appropriate research and evaluation using longitudinal data. We believe there is ample room in FERPA to interpret the research and evaluation purposes for which data are disclosed to include these needs.

"Outsourcing" (Proposed §99.31(a)(1)(i)(B))

Under FERPA, personally identifiable information from education records may be disclosed to school officials with legitimate educational interests in the information without recordation. Proposed §99.31(a)(1)(i)(B) would expand the school official exception to include contractors, consultants, volunteers, and other outside parties to whom an educational agency or institution has outsourced institutional services or functions that it would otherwise use employees to perform. The proposed regulations would require these outside parties performing outsourced functions to be under the direct control of the educational agency or institution. We generally support these provisions.

However, in some states, consistent with state law, the state longitudinal data system may properly be understood as maintaining education records for educational agencies and institutions, not as a separate recipient of a disclosure of education records from them. That may be part of the essential nature of a state longitudinal data system – to unify and debalkanize maintenance of the records of educational agencies and institutions needed for assessing and improving educational agencies, institutions, and programs and instruction for individual students. That function of a state longitudinal data system is
incidental to the role of state education authorities to assist and support educational agencies and institutions within the state. FERPA defines the term "education records" as records maintained by an educational agency or institution "or by a person acting for such agency or institution." Nothing in FERPA or logic would prohibit a state longitudinal data system from acting for an educational agency or institution in maintaining its education records.

We believe proposed §99.31(a)(1)(i)(B) needs to be amended to accommodate that situation. In particular, while the concept of direct control by the educational agency or institution makes sense for functions related to education records that are "outsourced" to other parties by the agency or institution at its volition, that is not the case where the state longitudinal data system performs the function of maintaining the education records for the educational agency or institution, consistent with state law. The responsibility of state education officials in overseeing or serving educational agencies or institutions under state law obviates the need for any control requirement.

P-16 (or P-20) Data Systems  (Proposed §99.35(a)(2) & (b)(1))

There is an emerging consensus among the states as to the need to develop state data systems that link student data across all levels of education, starting from pre-K programs through postsecondary education. That is also federal policy, as embodied in Section 6401 of the America Competes Act, Public Law 110-69. Only a few states to date have moved to establish consolidated data systems that maintain these data in a single system. Many other states have separate data systems for different levels of education, but are moving to link data between the systems so that student information can be tracked over time. It is critical that states have the capacity to do this, not only to track the educational performance and needs of individual students, but also because data on student performance at different levels of education are needed to evaluate, and perhaps to hold accountable, schools and programs at other levels of education. For example, many state and local educational agencies have come to recognize the importance of examining how their former students do in postsecondary education (e.g., how many require remedial courses; how many progress on schedule, etc.) in order to know how their secondary schools are performing. In sum, it is vital that information be shared up and down the pipeline to postsecondary education to provide feedback at all levels for continuous improvement and alignment.

We note also that the fact that a state may elect to vest data or evaluation responsibilities in separate data systems, rather than a consolidated system, should not prevent the exchange of information for legitimate evaluation or research purposes. The purposes and

13 The Family Educational Rights and Privacy Act defines education records as records maintained by an educational agency or institution “or a person acting for such agency or institution,” and “person” is defined in the U.S. Code to include not only an individual human beings, but also an organization or agency. 1 U.S.C.§1.
use of the data are precisely the same – and the effect on student privacy is no different – whether these systems are consolidated or separate. In both cases, these are state education authorities performing evaluation or audit functions, for the benefit of educational agencies and institutions, and consistent with the literal terms of FERPA. States need to have flexibility in structuring these systems and in ensuring that data are efficiently shared between these state systems for these purposes.

To permit that flexibility, two changes in the regulations and one clarification are needed. Specifically, USED needs to make the changes recommended above relating to the approval and recordation of further disclosures by state education officials and the authority of state education officials to enter agreements for studies on behalf of educational agencies and institutions in their state.

In addition, the discussion of this issue in the preamble to the proposed regulations, while generally supportive of the states’ need to consolidate records across the P-12 and postsecondary levels, is problematic. It suggests that for a postsecondary data system to share student data from student records at the postsecondary level with a P-12 data system, the P-12 data system must have authority under federal, state, or local law to evaluate postsecondary programs. (The same point is made for the opposite situation, of a P-12 system sharing its data with the postsecondary data system.) That discussion reflects a fundamental misconception of why such sharing is needed and of the FERPA statute. Postsecondary student data need to be shared with the P-12 data system not for the P-12 data system to evaluate postsecondary programs, but rather for the P-12 data system to evaluate P-12 programs. As noted above, information on how former secondary school students perform in postsecondary education is needed to evaluate secondary schools. The issue should be simply whether access to the records is needed to perform evaluation functions lodged in the system to which the records are disclosed, consistent with state law, not whether the system has authority to evaluate programs at the particular level to which the records directly relate. Nothing in the FERPA law or in logic drives the description in the preamble. USED needs to correct it, either in the final regulation itself or in the preamble to the final regulations. We believe that the three noted changes or clarifications need to be made to align the regulatory provisions, both with the positive rhetoric about state data systems in the preamble and with the real world needs of state data systems.

Sharing Education Records with Public Human/Social Service or Employment Agencies (not addressed in proposed regulations)

The Needs

Educational agencies and institutions often are not able to be effective in improving academic achievement for all students, and particularly for at-risk Pre-K to 12 students from low-income families, unless other social and family issues are addressed. Human/social welfare and youth agencies, including agencies that serve current and former foster children, have the expertise and the responsibility under state and local law
to provide these services. It is critical that educational agencies and institutions be able to work together with these public agencies in meeting the needs of these students, and it may be equally critical to these other agencies that they have access to information on student performance and problems in the schools, as well as other personally identifiable information from student records, in order effectively to address the needs of these students. This is an important emerging issue for states, as we address the potential uses of state longitudinal data systems.

Another area that implicates similar legal issues under FERPA relates to the need to share data with state employment or job training agencies, either in cases where the student is being served by these agencies while still enrolled in school, or in cases where the individual is no longer enrolled in school. In the former situation, access to education records by public job training or employment agencies addresses needs similar to those relating to the social welfare and youth agencies. In the latter situation, access to education records by public job training or employment agencies addresses needs parallel to those for students who leave K-12 schools and enroll in a postsecondary program; namely, tracking the student’s progress and needs beyond K-12 and evaluating K-12 programs in preparing students for the world of work (similar to college education). Indeed, we believe there is a need for state employment and job training agencies to create data systems that encompass or link all employment, job training, adult, and postsecondary education programs to evaluate program outcomes and to conduct cost/benefit analyses to strengthen academic programs, employment retention and gains for all students/former students.

Proposed Changes

These issues are not squarely addressed in the proposed regulations, and we acknowledge that FERPA includes no specific authorized disclosure focused on these needs and that the Department may lack statutory authority to fully meet them. This may be an area where a legislative change to FERPA is needed.

At the same time, we believe there are changes that can be made in the final regulations to provide at least some measure of relief in this area. Specifically--

1. **Issue of Control by State Education Officials.** In a January 30, 2003, letter from the then-Deputy Secretary, the Department, reversing a prior memorandum it had issued, took the position that a state educational agency may not provide access to personally identifiable information from education records to a state unemployment insurance agency or state department of labor evaluating programs under the Carl D. Perkins Vocational and Technical Education Act and the Adult Education and Family Literacy Act. The letter interpreted subsection (b)(3) of FERPA, authorizing access of state educational officials to personally identifiable information in education records for the purpose of evaluating federal education programs. The rationale of the letter was that, while a state educational agency could use a contractor to conduct an evaluation, it would not control another state agency in doing this work, and therefore could not regard the other state agency
employees as its representatives. The proposed regulations do not propose any revision to this interpretation.

With due respect, this interpretation makes no sense. There is no reason why one state agency could not maintain control over another state agency in performing functions for it, equivalent to the control it exercises over its contractors. Although that may be an issue under the law and facts within a particular state, there is no basis in law or fact for creating an irrebuttable federal presumption that one state agency may not control the use of its data by another state agency; for example, through inter-agency state agreements or under the terms of state regulations.

Moreover, USED's position that personally identifiable information from education records disclosed to state educational agencies for evaluation of federal or state programs may be disclosed only to state education officials or their employees or contractors is undermined by another position taken by USED in prior correspondence and in these proposed regulations (proposed §99.3); that such information may be shared with state auditors who are not educational officials and who, by definition, are not under the control of state education officials. The authorized disclosures for state audit and evaluation are covered by the very same statutory provisions. (subsection (b)(3) of FERPA) There is no legal basis to interpret the same language one way for audits and a contradictory way for evaluations.

We recommend that the proposed regulations be amended, or that a discussion be included in the preamble to the final regulations, to reverse this unsupportable position, which serves to hamper critical sharing of data by state education officials with other state and local agencies to meet the needs of at-risk students.

Scope of Education Programs. The legitimate issue presented by the language of subsection (b)(3)&(5) of FERPA is whether the disclosure is to evaluate a federal or state education program. We believe that the issuance of final regulations provides an opportunity for the Department appropriately to provide guidance that clarifies how some disclosures of information to public social welfare and youth agencies and public employment agencies may come within this authority or within the authorized disclosure provisions regarding studies to improve instruction.

- First, to the extent that the purpose of a disclosure is to evaluate education programs overseen by State education officials, as indicated above, the final regulations should provide that nothing in FERPA prohibits disclosure of data to the other public agency under inter-agency agreements or state regulations that maintain control of the data in the state education agency.

- Second, the final regulations should define education programs broadly to include job training and social services delivered in the schools or in close
collaboration with the schools with a purpose of strengthening academic gains for participating students. In fact, the Department’s regulations on sex discrimination in education programs under Title IX of the Education Amendments of 1972 define job training programs as education programs. (34 CFR §106.31(a)) There is no reason why a more restrictive definition of education programs should be used with regard to FERPA.

- Third, for purposes of the authority to disclose education records for evaluation of federal or state-supported education programs to state education officials, state officials employed by agencies with non-education functions but who have oversight responsibilities for education programs, such as job training programs or social services in the schools, should be deemed state education officials with regard to those education programs. On that basis, they should be permissible recipients of disclosures of personally identifiable information from education records, even if USED does not revise the position taken in its 2003 letter.

- Fourth, in conjunction with the recommendation above that the final regulations clarify that the state data system may enter an agreement on behalf of educational agencies or institutions with a research organization to perform a study to improve instruction, the final regulations or preamble should indicate that such studies may include studies by social welfare or youth agencies or employment or job training programs if the study is designed to yield conclusions that have implications for improving instruction in the schools.

**Disclosures to a Student’s Former Educational Agency or Institution (Proposed 99.3)**

The proposed regulations would exclude from the definition of “disclosure” the release or return of personally identifiable information from an education record, to the party that provided or created the record. This would allow a college to send a record that appears to be falsified back to a secondary school that created or sent the document to confirm its authenticity. We support these provisions as far as they go.

However, we are concerned that the proposed regulations do not clearly authorize disclosure of records to a student’s former school for the purpose of evaluating its programs. In particular, many states have recognized a vital need for secondary schools to have information on how their alumni perform in colleges, for evaluation and accountability purposes. We recognize that this would involve a disclosure of personally identifiable information to an educational agency or institution beyond the record that the school had previously supplied. However, we recommend that USED in the final regulations or their preamble address options for providing this information back to a student’s former educational agency or institution, including—
viewing such disclosure and use of the information as coming within subsection (b)(5) of FERPA, which authorizes disclosures to local as well as state education officials in connection with the evaluation of federal or state-supported education programs, or

providing the information to the former educational agency or institution for a study to improve its instruction, under an agreement between the educational agency or institution and the student’s postsecondary school or the state data system that maintains the information.\textsuperscript{14}

We also recommend that the final regulations or their preamble clarify that personally identifiable information from an education record may be provided to a student's former school in a different state under the provisions for a study to improve its instructional program. These provisions are needed to address confusion among many educational agencies and institutions on this point.

\textbf{De-Identified Student Data (proposed §§99.31(b) & 99.3)}

The proposed regulations would, for the first time, add standards for releasing, without parental consent, education records that have been de-identified through the removal of all personally identifiable information and for coding of that information for research purposes (§99.31(b) and preambulatory discussion at 73 Fed. Reg. at 15583-15585).\textsuperscript{15} The proposed regulations would impose a balancing test, by defining personally identifiable (or non-de-identified) information as information that would allow a reasonable person in the school or its community, who does not have personal knowledge of the relevant circumstance, to identify the student with reasonable certainty. Personally identifiable information also includes information requested by a person who the school or local educational agency reasonably believes has direct, personal knowledge of the identity of the student to whom the education record directly relates (a “targeted request”).

We generally support USED’s effort in these proposed regulations to provide greater clarity on the standards for de-identifying education records for research purposes. However, we cannot stress strongly enough that the Department should be under no illusions that the possible de-identification of student data provides adequate flexibility to meet the needs to use statewide data for research purposes. In many cases, use of de-identified data is not adequate to support appropriate analytical research that will lead to improved educational outcomes. The unavailability of personally identifiable information to researchers may compromise their ability to perform the necessary research. Moreover,

\textsuperscript{14} We believe this is an issue separate from that addressed in proposed amendments to §99.3, excluding alumni information from the definition of education records. That information would be a record of the subsequent school attended by the student.

\textsuperscript{15} USED has substituted the term “de-identified” information for “anonymous” information, used in its prior communications.
complete de-identification of systematic longitudinal data on every student may not be possible.\textsuperscript{16}

We are also concerned that the discussion of small cell size in the preamble (in the first column at p. 15584) includes an example that reflects a misunderstanding of small cell size. It states:

“Some schools have indicated, for example, that they would not disclose that two Hispanic, female students failed to graduate, even if there are several Hispanic females at the institution, because of the likelihood that the students who failed to graduate could easily be identified in such a small data set.”

This example could leave the impression that the problem is with the number two (the numerator in the graduation rate for Hispanic females), not with the small overall size of the Hispanic female group at the institution (the unspecified small denominator of the graduation rate). That could feed a common misunderstanding that small numerators need to be masked, regardless of the size of the denominator. However, the issue with “small group sizes” or “small data sets” is the size of the denominator, not the size of the numerator. If two Hispanic students out of 100 fail to graduate, then publishing a statistic revealing the number two does not pose small group size issues. The only exception to the point that the denominator, not the numerator, is the issue would be if either 0 students out of 100 (in the example) fail to graduate or all 100 do. In that case, publishing the statistic indeed reveals the graduation status of every one of the students.

**Other Proposed Provisions**

Other provisions in the proposed regulations are less central to the mission of the Data Quality Campaign to promote effective use of education data to support standards-based reform in education. We note those below for which we express a specific recommendation.

\textbullet\ We support the proposed provisions for disclosures to state auditors (proposed §99.3), but believe as a legal and policy matter that this provision should be extended to state evaluators as well as auditors, as indicated above. The same legislative language applies to both.

\textbullet\ We support proposed provisions (proposed §99.5(a)(2)) clarifying permissible disclosures to parents of students who turn 18 years old or who are enrolled in postsecondary institutions.

We support proposed provisions (proposed § 99.31(a)(2)) that clarify that disclosures are permitted not only to a school, school system, or postsecondary institution where the student seeks or intends to enroll, but also to one where the student is already enrolled in connection with the student’s enrollment or transfer.

We support proposed provisions in §99.31(a)(1)(ii) regarding appropriate controls to ensure proper access to education records.

We support the proposed policy of deference to judgments by state or local agencies and schools regarding health and safety emergencies that warrant disclosure of personally identifiable information (proposed §99.36(c)).

Thank you for this opportunity to comment on the proposed regulations. It is vital that USED adopt the essential changes recommended in this letter in order to harmonize the Department's interpretation of FERPA with the imperative to use statewide education data effectively to strengthen academic achievement and advance education reform.

Sincerely,

ACT
Alliance for Excellent Education
American Association of State Colleges and Universities
APQC
Consortium for School Networking
Council of Chief State School Officers
Educational Policy Institute
The Education Trust
Jobs for the Future
National Association of Secondary School Principals
National Center for Educational Achievement
National Center for Higher Education Management Systems
National Governors Association
Postsecondary Electronic Standards Council
Schools Interoperability Framework Association
State Educational Technology Directors Association
State Higher Education Executive Officers

Submitted through the Washington, D.C., office of the National Center for Educational Achievement / ACT, by Thomas A. Lindsley, Director, 202-223-2318 for the Data Quality Campaign partners listed above. Analysis and drafting conducted by Steven Y. Winnick, Counsel, at EducationCounsel LLC, in affiliation with Nelson Mullins Riley & Scarborough LLP, 202-545-2913.
U.S. Department of Education issues proposed amendments to FERPA regulations—Opportunity to Offer Comments

The U.S. Department of Education (USED) has issued for public comment proposed amendments to regulations under the Family Educational Rights and Privacy Act (FERPA) — go to http://www.dataqualitycampaign.org/policy_implication/ferpa_amendments.cfm for a copy of the document.

Because FERPA, as previously implemented, has raised significant impediments to core functions of state longitudinal data systems (SLDSs), and these proposed regulations include provisions that bear on these issues, it is important for education stakeholders to review the proposals and submit comments to USED, including comments that endorse positive provisions, as well as comments that recommend revisions or additions that are needed.

Public Comment Process
• Public comments are due to USD within 45 days after publication (by May 8, 2008).
• The proposed regulations include specific instructions on how to send comments.
• The DQC Partners will share detailed comments about the proposed regulations via email and on the website (www.DataQualityCampaign.org) in the next week. The enclosed chart provides a synthesis of the comments we are preparing. We hope that these comments will be helpful to others in formulating their own responses.
• Please visit www.DataQualityCampaign.org/policy/ferpa for resources on FERPA and state MOUs to ensure appropriate sharing of data. Please contact Erica@DataQualityCampaign.org if you would like to add information/resources to this site.

State longitudinal data systems make it possible for student data to be collected and shared with parents, teachers, students, administrators, researchers, and institutions across the education pipeline. Building and using these data systems are an indispensable foundation for standards-based education reform. At the same time, this goal needs to be balanced with appropriate protections for the privacy of student records under the federal Family Educational Rights and Privacy Act (FERPA), which imposes limits on the disclosure of student records by educational agencies and institutions that receive funds from the U.S. Department of Education (USED).

FERPA was enacted in 1974, predating electronic maintenance and use of data; state data systems; and the development of federal and state policy stressing the need for fuller use of education data at all levels of education to support evidence-based education. It may well be that FERPA needs to be amended to come into the 21st Century. Nevertheless, FERPA provides for disclosure of student records to authorized recipients for authorized purposes, thus in effect harmonizing the right to privacy with other central public policy interests. The DQC Partners believe there is ample room to interpret FERPA to permit effective use of data in state longitudinal data systems to promote educational reform through research, evaluation, and accountability, with appropriate protection of student privacy. However, authorized disclosures in the law have been interpreted very narrowly, with the effect of impairing core functions of state data systems. The results have been federal policies unnecessarily at war with themselves; a serious chilling effect on the development and use of robust state data systems; and the persistence of widespread misunderstanding of FERPA.

USED on March 24, 2008, issued proposed amendments to FERPA regulations that may help to address some of these issues. The DQC encourages all education stakeholders to weigh in on these draft regulations to help the Department reduce the confusion and ambiguity that exists around sharing data.

As you develop your own comments and have any questions, please contact Tom Lindsley, tlindsley@just4kids.org, or Steve Winnick, steve.winnick@hklaw.com.
### Authority of State Longitudinal Data Systems (SLDS) to redisclose data

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>Authority of State Longitudinal Data Systems (SLDS) to redisclose data at all</td>
<td>FERPA bars redisclosures generally. Current regs generally permit redisclosures if anticipated &amp; recorded with initial disclosure. But USED interprets these regs not to permit any redisclosures by state education officials, because FERPA provisions under which they receive data (for evaluation, audit, federal compliance) have specific limits not to share with non-state education officials and to destroy data when no longer needed for these purposes.</td>
<td>Would permit redisclosures by state education officials, subject to current regs that require redisclosures to be anticipated and recorded with the recordation of initial disclosure by the school or local agency.</td>
<td>The proposed change potentially may help, but only if the final regulations are revised to permit state to make redisclosures and record them at time of redisclosures. Three ways to approach this (each sufficient in itself): (1) simply clarify that state officials overseeing the SLDS may make and record the redisclosures and record them at time of redisclosure. (2) view the SLDS as maintaining records for schools and local agencies; or (3) redefine “educational agency or institution” to include state education agencies (and SLDS). It is unnecessary to do the last option, and it would need to be accompanied by other changes to avoid imposing duplicative FERPA burdens on states.</td>
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### Authority of SLDS to authorize research studies and disclose data to research organizations

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<tr>
<td>Authority of SLDS to authorize research studies and disclose data to research organizations</td>
<td>FERPA permits disclosures to organizations conducting studies to improve instruction “for, or on behalf of,” educational agencies or institutions. USED has interpreted this narrowly to exclude research initiated by the research organization.</td>
<td>Would reinterpret the subject study disclosure to cover studies if there is an agreement between educational agency or institution and the research organization limiting use of data to purpose of study specified in agreement.</td>
<td>This is potential step forward, but only if proposed regulations are revised to permit state education officials who oversee the SLDS to enter the agreement for the study. Requiring each school or local agency to enter the agreement is unworkable and thwarts a core purpose of SLDS to authorize studies using statewide data.</td>
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### Authority to share data between K-12 & postsecondary SLDs

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<tr>
<td>Authority to share data between K-12 &amp; postsecondary SLDs</td>
<td>Not specifically addressed, but USED position on redisclosure hamstrings sharing.</td>
<td>As described above, would authorize state education officials generally to make redisclosures and broaden disclosures for studies. Preamble also includes positive discussion of using data in consolidated SLDS and sharing between K-12 and postsecondary if recipient SLDS has authority under federal, state, or local law to evaluate data at that level.</td>
<td>Subject to changes and clarifications on the two issues above, the proposed regulations adequately address this issue.</td>
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### Authority to disclose data to a student’s former school

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<tr>
<td>Authority to disclose data to a student’s former school</td>
<td>FERPA permits disclosure to new school that students seek to, or intend to, attend, but does not specifically authorize disclosure to a former school.</td>
<td>The proposed regulations permit disclosure of the same record back to a former school for authentication purposes, but do not address disclosure of a record with new data from a current school back to the student’s prior school.</td>
<td>The final regulations should clarify that these are authorized disclosures for studies to improve instruction or for purposes of evaluations of federal or state-supported education programs by “local educational officials.”</td>
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1 Except in context of discussing provisions on de-identified data, “data” as used in this chart refers to personally identifiable information relating to students and their parents derived from education records.
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<td>Authority to disclose data to non-education agencies, including employment agencies and social service agencies that serve at-risk students</td>
<td>These disclosures generally are not authorized by FERPA. USED has taken narrow position on whether data may be shared with other agencies as representatives of state education officials to carry out an evaluation. USED has not squarely addressed provision of data to these agencies for studies to improve instruction.</td>
<td>Would not specifically address these issues.</td>
<td>Regulations should revise prior restrictive interpretation that non-education state officials may not perform an evaluation for an education official; they should broadly define education programs subject to evaluation; and clarify that disclosures for studies by employment or job training programs or social welfare or youth agencies are permitted if the purpose is to improve school instruction.</td>
</tr>
<tr>
<td>When is FERPA not an issue because the data are not personally identifiable</td>
<td>USED regs say FERPA covers personally identifiable data, defined as data easily traceable to individual student. No standards in regs or guidance. USED in answering specific questions has been restrictive, ruling that coding of info for research purposes does not make it anonymous or de-identified if the security number or code is used for other purposes.</td>
<td>Would provide standards for when data are de-identified, including how data may be coded for research purposes, generally consistent with past interpretations.</td>
<td></td>
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<tr>
<td>Outsourcing of data functions</td>
<td>FERPA provides that education records may be maintained by an educational agency or institution or a person acting for it. Current regulations do not address, but, in letters, USED has taken view that contractors may maintain and analyze data.</td>
<td>Would codify current USED view that contractors may maintain and analyze data on behalf of an educational agency or institution on same basis as an employee if under control of the agency or institution.</td>
<td>Generally support this provision, but it should be clarified to permit a SLDS to maintain records for an educational agency or institution.</td>
</tr>
<tr>
<td>Disclosures to state auditors who are not education officials</td>
<td>Current regulations do not address, but USED has informally interpreted FERPA to permit disclosures to state auditors who are not education officials.</td>
<td>Would codify USED’s interpretation.</td>
<td>Generally support, but recommend that the same interpretation be applied to state officials responsible for evaluation.</td>
</tr>
<tr>
<td>Disclosures to parents of students who are postsecondary students or who turn 18 years old</td>
<td>FERPA permits disclosures to parents if the student is claimed as dependent on taxes or in other limited circumstances.</td>
<td>Would clarify authorized disclosures to parents</td>
<td>Support these provisions.</td>
</tr>
<tr>
<td>Disclosures to protect student or others in health or safety emergencies</td>
<td>Current regulations &amp; letters have interpreted activities very narrowly for non-continuing, immediate emergency.</td>
<td>Would revise interpretations to defer to any rational judgment of an educational agency or institution as to need to disclose to protect health or safety.</td>
<td>Support these provisions.</td>
</tr>
<tr>
<td>Appropriate controls to ensure proper access to education records</td>
<td>Not addressed in current regulations</td>
<td>Would require reasonable methods to ensure proper access to education records.</td>
<td>Support these provisions.</td>
</tr>
</tbody>
</table>

Family Educational Rights and Privacy Act (FERPA)
Summary of existing problems, proposed regulations and recommended comments on the proposed regulations

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Data Quality Campaign

Page 3 of 4
The Data Quality Campaign is a national, collaborative effort to encourage and support state policymakers to improve the collection, availability, and use of high-quality education data, and to implement state longitudinal data systems to improve student achievement. The campaign aims to provide tools and resources that will assist state development of quality longitudinal data systems, while also providing a national forum for reducing duplication of effort and promoting greater coordination and consensus among the organizations focusing on improving data quality, access and use. The DQC is an enthusiastic supporter of the State Education Data Center and SchoolDataDirect.org. The DQC is supported by The Bill & Melinda Gates Foundation, do we want to add Dell? Casey Family Programs? Broad? .

We're on the Web!
See us at: www.DataQualityCampaign.org
Send questions to: erica@DataQualityCampaign.org

About the DQC

Aimee R. Guidera
Director
aimie@DataQualityCampaign.org

Nancy J. Smith, Ph.D.
Deputy Director
nancy@DataQualityCampaign.org

Elizabeth Laird
Research Associate
elizabeth@DataQualityCampaign.org

Erica Wiggins
Administrative Assistant
erica@DataQualityCampaign.org

4030-2 W. Braker Lane, Suite 200
Austin, TX 78759
Phone: 512.320.1816
Fax: 512.320.1877

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Campaign Partner Activities Related to Data

CONFERENCES:

March 24-28, 2008
AERA
Annual Conference
New York, NY

April 12-15, 2008
CCSSO
Legislative Conference
Washington, DC

April 22-26, 2008
NCSL
Spring Forum
Washington, DC

May 1, 2008
DQC and MHEC
P-20 Regional Meeting
Chicago, IL
(Invitation only)

May 1-3, 2008
PESC
Technology and Standards Conference
Washington, DC

May 8-9, 2008
SIFA
2008 End-User Conference
Phoenix, AZ

New Endorsing Partner

James B. Hunt Institute for Educational Leadership and Policy – (www.hunt-institute.org)
The James B. Hunt, Jr. Institute for Educational Leadership and Policy was founded at the close of Governor James B. Hunt, Jr.'s historic fourth term as governor of North Carolina to carry on his legacy as an advocate for quality education for all children. While operating at the intersection of policy and politics, the Hunt Institute works with national, state, and local leaders to secure America's future through quality education. Through its work to train leaders, showcase promising education practices, and help apply policy research, the Hunt Institute informs and energizes the educational debate, working with leaders to develop, implement, and evaluate state-specific education plans. The result is the sharing and development of ideas and practices about educational leadership, and the conversion of ideas into strategic action. The Institute also provides consultative services to its clients to assist them in focusing on specific policies that leaders either seek to propose or implement. Though the Hunt Institute's primary constituency is governors, it realizes governors alone can not affect change and progress. As such, the Hunt Institute also works with lieutenant governors, legislators, mayors, business leaders, and PK-20 education leaders.

2007 Recognition Program Award Winners

State Policymakers
Susan Heegaard, Commissioner, Minnesota Office of Higher Education
Alice Seagren, Commissioner, Minnesota Department of Education

State Data Director
Corey Chatis, Director of Data Quality, Tennessee Department of Education

District Data Director
John Weant, Director of Information and Communication Systems, Charlotte County Public Schools, Florida

For more details, go to http://www.dataqualitycampaign.org/activities/recognition_awards_2007.cfm
Notes from the R3SG (Rome Student Systems and Standards Group)
Meeting, Dublin, Ireland, 25 April 2008

Summary

- Since the first meeting in November 2007: At a meeting to discuss submission of the course description specification to CEN (Comité Européen de Normalisation, European Committee for Standardization), the group agreed to use the CDM specification.
- Harmonization of the CDM specification from Norway, EMIL from Sweden, and CDM-FR as implemented in France would be achieved by using transformation among the specifications. The group assumed future convergence to the evolving CDM implementations.
- In addition to course descriptions, there is a need for an electronic transcript and diploma supplement specifications.
- The group is aware of the U.S. specifications from the Postsecondary Electronic Standards Council (PESC). These include an approved transcript specification and the development of a course inventory specification.
- The discussion of use cases now informally includes “course equivalencies” though that is not an immediate requirement. (This discussion began at the Rome Workshop with David Moldoff’s description of processes used for transfer credit in the U.S., especially between community colleges and universities).
- Without discussion at this time, the group expects to use the OSCI-2 real-time XML SOAP-based business network.

Background on the R3SG

A group of software and servicer providers and college and universities have been meeting informally in Europe to agree on the exchange of student and course information to support the Bologna process. The first workshop in November 2007 was in Rome, the second in April 2008 was in Dublin, and the third is planned for October 2008 in Stuttgart. PESC Director Dave Moldoff of Academy One and Randy Timmons of Sigma Systems Inc. have been participating in R3SG attending both meetings.

Beginning in 1999 and responding to student union requests for transferability of credit—called mobility in Europe, the policies and procedures and curriculum changes are being followed by administrative systems development. Several university-developed systems have been reported in the annual EUNIS (European University Information Systems) conferences.¹

¹ This is similar to early implementations in the U.S. The data exchanges were primarily between a “feeder” community college—for example Orange Coast College—and a nearby university—the University of California.
One active stream of activity is the standardization of data based on the CDM (Course Description Metadata) specification developed in Norway, extended and implemented in Sweden as EMIL, and broadly implemented in France as CDM-FR by the ESUP Portail Consortium. Their goal is to have an European Union standard via CEN (European Committee for Standardization). Another stream of activity is the specification for the exchange of data itself based on the emerging OSCI-2 (Online Services Computer Interface) specification. OSCI is based on Web Services—XML, SOAP and the WS-* series of specifications. If CDM becomes a European Standard, then national standardization activities are expected to cease. Also the approved specification can become a requirement for procurement.

The Dublin Workshop

The Dublin Workshop was held Friday, April 25, 2008 at the Dublin Institute of Technology. The meeting was hosted by Digitary. Thirty-seven participants from 11 countries registered and more attended. Digitary is a trading name of Framework Computer Consultants Limited, registered in the Republic of Ireland. The company was founded in 1999.

Between the Workshops

Simone Ravaiolı, Kion Spa and Stéphane Valey, unisolution GmbH, described the Paris meeting and submission of the CDM specification to CEN. The group decided to base the submission on CDM because it was more extensive and had already been proposed by Norway. There are current implementations in Sweden and France and another specification—XCRI—developed in the U.K. by the Joint Information Systems Committee. XCRI (eXchange of Course Related Information) was used primarily to make course information available on Websites, especially UCAS, a Web-based consolidated course inventory. With reduced scope XCRI, itself was adapted from the CDM specification. The U.K. representative, Mark Stubbs from Manchester Metropolitan University, is aware of the ongoing development of the course inventory specification in the U.S.; his recommendations reflect this awareness.

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Irvine, especially in California where there is a strong community college transfer (mobility) program. When this exchange is automated it becomes difficult to implement a standard since a substantial volume of transactions, and need, has been satisfied. In this example, more than 80% of university transfers were to the single campus of the University of California.

2 Under Alain Mayeur’s leadership (Université de Valenciennes) the ESUP Consortium first implemented uPortal—a software development led by the University of Delaware with support from the Andrew W. Mellon Foundation—and the CAS security system from Yale University. Then the Consortium developed a help desk application and integrated the portal with the Moodle learning system. The Consortium lists 50 implementing institutions on their Web site. More than 200 attended the consortium’s last conference.

3 “The company worked over a number of years with the Higher Education Sector on the development of the Digitary system for the secure online issuing and authentication of tamper-evident official graduation documents, which was first implemented in 2005. In February 2007, the company changed its name to Digitary, which stands for “Digital Notary” to emphasise the company’s specialisation in secure document production and authentication.”
Because of the implementations, the group suggested that transformations—specifically XSLT transformations—could be used. This implies any business network should include a transformation service and likely the implementation for two-step routing.4

Student Systems Implementers' Perspective

Andy Dowling, Digitary and Stéphane Velay, unisolution, led an open discussion of specifications, prioritization, and timings. Their audience included software and service suppliers who could implement the specification. The discussion focused on how to implement the specification, not whether to implement the specification. It appeared there was consensus to move forward based on the prior work.

At the Rome Workshop Dave Moldoff had commented that standards are broadly implemented specifications. Implementations, not documents, defines a standard. The Workshop was also an example of Europeanization. As Nokia’s Yrjo Espoo described the standardization process: “The thing is, something was in the air. This idea of Europeanization, of building a common Europe, was moving forward in many areas: joint research projects, joint business ventures, the European court, the economic union, that sort of thing. …Let’s make one telephone standard for all of Europe and we did.”5

Lucas Heymans, Oracle Corporation, again raised the issue of harmonization with other standards. He suggested careful attention be given to the HR-XML specifications since they are supported by ERP software suppliers, include education data, and are part of the automated dataflows from students and institutions to employers. Stéphane Velay commented he hoped to meet with the HR-XML Consortium during his next travel to the U.S.

CEN Standard Developers Perspective

4 This technique was used in the early 2000s by the U.S. Department of Education’s Modernization Program so users could forward files (or messages) in either the legacy or the new XML specification format. Over time this transformation became unnecessary. The transformation was done by the IBM MQ bus and applications, if needed, between receiving the file and forwarding it to the appropriate application. There were no reported problems with this design serving more than 14 million students.

5 From T. R. Reid’s “United States of Europe,” New York, Penguin Press, 2004, p. 126. Reid, a writer for the Washington Post, commenting on the standards efforts in Europe. The Workshop, led by young entrepreneurs—Reid’s ‘Generation E,’—are Reid’s “new Europeans.” “When Generation E gets together these days, people tend to leave all those traditions [of native language] behind and converse in the one language that every young European shares, which is English.” Both workshops were in English though in Rome native English speakers were a minor fraction of those participating.
Erlend Overby, MLO [Metadata for learning Opportunities] project manager, described the process of CEN standardization. He provided some timelines—generally measured in months. Since many of the suppliers attending are either increasing the implementations of their software products and services or plan to do so soon, these implementations will use the specification draft. Overby described both the risks—changes to the specifications—and benefits—an improved specification—of these early implementations.

Open Discussion

Digitary’s Jonathan Dempsey led the open discussion in the afternoon. The discussion suggested some additional use cases that should be considered and asked for additional detail. However, it was clear the discussion was focused on how to complete the draft specification and how to implement the specification.

Hermann Strack commented that the OSCI specification work would be increasing, with German approval expected. Sven Gutow, HIS Hochschul-Informations-System GmbH, made an interesting observation. He said the architecture and functional requirements for the current generation of installed software was close to obsolescence. He said the combination of new architecture (which appeared to be service-oriented) and new administrative processes to support the Bologna process would be an opportunity for system redesign and redevelopment of administrative systems.

Unisolution’s experience with their MoveOn software and service—which includes use by U.S. colleges and university—suggests a trend toward hosted services rather than local campus data processing.6

Washington DC Presentation

Two of the organizers, Manuel Dietz and Stéphane Valey of unisolution GmbH in Stuttgart, Germany will be attending the NAFSA (National Association of Foreign Student Advisors) Convention May 27-30 in Washington, DC. Dave Moldoff suggested they brief interested U.S. associations as part of their visit. This is tentatively scheduled for Mary 28th. HR-XML Consortium Executive Director Chuck Allen will be joining the discussions. The briefing will be held at the offices of the Postsecondary Electronic Standards Council.

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6 The rapid trend to use services was reported by a panel of firms at the following week’s 5th Annual Conference on Technology and Standards in Washington, DC.
Keynote Speakers

Martin Dougiamas and John Seely Brown

Moodle Moot - June 10th and 11th
The two day Moodle Moot will be held Tuesday June 10th and Wednesday June 11th. Early registration for the event is $249/person. It will feature a morning and afternoon general session beginning and ending each day. We will also be featuring a dinner at the conference center after the first day on Tuesday evening, for an additional $50/person.

Developers Hackfest - June 9th
Pre-Conference Moodle Developers Hackfest, June 9th The 2008 Moodle Developers Hackfest will be held in conjunction with the San Francisco Moodle Moot at the Best Western Grosvenor Hotel. It will be an all day event held June 9th. Remote-Learner.net is sponsoring and hosting the event. This is an opportunity for developers and IT people to talk code, meet Martin Dougiamas and other core developers. Come and learn and share your ideas. 9:00AM – 5:00PM. Cost: FREE

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