Data Quality Campaign Comments on Departmental Review of FERPA Regulations

Dear Secretary DeVos,

As organizations committed to the effective and secure use of education data to improve education and empower communities and families, we appreciate the opportunity to provide input on the Department of Education's (ED) review of existing federal education regulations. Regulations must provide real value to students, educators and policymakers, including by clarifying legislative intent and promoting a law's effective implementation. With that framework in mind, we offer comment with regard to the Family Educational Rights and Privacy Act's (FERPA) regulations, which help to protect students' education records and enable the use of student data for legitimate educational purposes.

FERPA (20 U.S.C. § 1232g; 34 CFR Part 99) governs management of students' education records, including articulating when and how schools may disclose personally identifiable information to parents and to other trusted parties that have a direct role in providing or improving education. These trusted parties can include other agencies and offices serving a student such as child welfare, vetted education service providers like school bus companies and tutoring programs, and approved researchers and program evaluators.

FERPA Regulations

The Department has issued numerous regulations on FERPA since its enactment in 1974 to reflect the evolution of education data management and use. ED approved the vitally important 2008 and 2011 FERPA regulations in direct response to state requests for clarification about how to implement FERPA in the digital age and promote effective data use by states and districts. Together, the updated FERPA regulations not only clarify and strengthen the law's key privacy protections, but also enable state and local innovation and coordination.

Education agencies rely on the clarity provided in the FERPA regulations to conduct some of their most basic functions. For example, districts share limited data with school bus companies to ensure their students get to and from school on time and safely. Teachers use apps and other education technologies to personalize learning in the classroom. School and district leaders use electronic data systems to protect, manage, and use their data, including to inform policy and program decisions. States can securely link their K-12 and postsecondary data systems to report postsecondary enrollment on their report cards as now required when possible by the Every Student Succeeds Act. These activities, and many other basic educational functions, rely on the clarity and specificity provided by FERPA regulations.

We recommend that ED integrate the modernizations its Regulatory Reform Task Force proposed to ensure updated definitions and clarifications, but otherwise **maintain these important regulations and the value they provide to states and communities.**

Enabling States to Innovate

FERPA regulations, notably those issued in 2008, enabled states to use their data to improve learning in four important ways:

1. By clarifying for states that sharing education records between districts is allowed for education purposes, for example when a student moves or when military families are transferred or to help schools calculate accurate high school graduation rates.
2. By clarifying that states can provide data and useful tools and analysis back to their districts. For example, states use district data on student performance to identify students at risk of dropping out by creating early warning systems, to help districts identify students eligible for college scholarships, and to help schools see how successful their students are after high school graduation.
3. By clarifying that states and districts can partner with researchers to analyze their data and identify what programs and practices work best for their students.
4. By clarifying that education agencies may grant access to records for trusted contractors, consultants, and other partners who help carry out education services. This clarification allows states and districts to work with companies providing school lunches, transportation services, class pictures, and more, as well as the education technology services that help educators personalize learning and give students unparalleled access to new learning opportunities.

Together, these clarifications allow personalized learning programs in schools and allow schools and districts to more efficiently run administrative tasks and functions. Here are two specific state-driven initiatives that illustrate the type of innovation that is possible because of the clarification that these regulations provide.

- Georgia developed a virtual "tunnel" to securely link data from the state system directly to district-level student information systems, which allows local education agency officials to view and compare state and local performance information on specific schools or programs to identify best practices, while teachers and parents now have access to detailed longitudinal data to support children in the classroom and at home.
- Kentucky legislators created the Kentucky Center for Education and Workforce Statistics, which securely links data from state agencies that serve students and workforce needs. These secure data linkages allowed the state to create useful feedback reports to inform education and workforce policies and empower decision makers at all levels. For example, the state's high school feedback reports provide high schools and families a better understanding of student success after graduation and have led to increased high school graduation and first-time postsecondary enrollment rates.

In both of these examples, states have prioritized providing teachers and parents with the information on their student and school that they want and deserve. A recent national poll found that American parents value, trust, and use education data with 94 percent of parents supporting teachers' use of data to support and enrich learning and 91 percent of parents reporting they would use data about the performance of a school, such as test scores and graduation rates, to make decisions related to their child's education. In addition, 88 percent of parents said they trust that their child's school is keeping their child's data private and secure.

FERPA regulations also support implementation of the Every Student Succeeds Act (ESSA), which requires states to make evidence-based policy decisions and develop more sophisticated accountability systems. FERPA regulations clarify that states can use their data systems to evaluate their programs, partner with trusted researchers to better understand their education outcomes, and create the indicators of student success that give the public real information they can use to understand their schools and hold them accountable.

Safeguarding Privacy

Along with providing further clarification about how states can securely link and use their early childhood education, K-12, postsecondary, and workforce systems to serve their students, FERPA regulations have actively improved the law's ability to safeguard student privacy—a foundational piece of effective data use. Most notably,

the 2011 regulations created the [Privacy Technical Assistance Center](#) (PTAC) at ED and created the role of Chief Privacy Officer to oversee their work. Today, PTAC provides resources, guidance, toolkits, and technical assistance to states, districts, and service providers to ensure they are safeguarding student privacy as they use data to support learning.

Modernizing FERPA

As noted by ED's Regulatory Reform Task Force, it is imperative that FERPA continue to [modernize and reflect changes in how schools operate](#). However, aside from the definitional and other technical adjustments identified by the Task Force, many larger considerations about how education data is used and safeguarded require the transparency, public input, and debate of the legislative process to fully ensure that the law is meeting modern needs and reflects how schools and classrooms function today. Significant modernizations or updates to FERPA should come through a transparent legislative process that elicits input from the educators, education leaders, and families the law affects.

Conclusion

Our organizations welcome the opportunity to further discuss the importance of these FERPA regulations with ED staff. We know that integrating the small modernizations recommended by the task force and otherwise maintaining these important regulations will have an outsize impact for students and families.

Sincerely,

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With support from:

- Access 4 Learning Community (A4L)
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