

Testimony to Oregon House Education Committee Re: HB 4062
by Lisa A. Shultz, M.S.E.E.
12 February 2014

Chair Gelsner and Members of the House Education Committee:

My name is Lisa Shultz. I served on the Beaverton School Board from 2007 to November, 2011. By profession I am an electrical engineer and have worked in the high tech industry for over 30 years. I am submitting testimony in support of HB 4062. In addition I would like to take the opportunity to respond on several points made by ODE in their submitted testimony from 2/3/2014.

Changes to FERPA

In the testimony to your committee supplied by ODE on February 3rd, ODE stated that “FERPA was recently reauthorized to include additional clarity around the construction and use of statewide longitudinal database systems.” FERPA has not been reauthorized by Congress. Rather administrative rule changes were made by the U.S. Dept. of Education in 2008 and 2011. The 2008 changes expanded access to school records to private third parties and in 2011, the Education Department again loosened the safeguards so that "authorized representatives" of the U.S. comptroller general, the secretary of education, and state educational authorities may access student records to audit or evaluate federally supported "education programs." [1] Many organizations expressed grave concerns about the 2011 rule change, including, the National School Boards Association [2], the American Association of Collegiate Registrars and Admissions Officers [3], the American Civil Liberties Union [4], the American Council on Education[5], the National Association of Independent Colleges and Universities[6], and Fordham Law School Center for Law and Information Policy [7].

Dual Database Architecture

Additionally ODE claims that it is necessary for a student’s personally identifying information to be revealed to individuals who are not directly responsible for a student’s education program in order to meet federal requirement and the creation of an SLDS. However, Ohio, for example, maintains dual databases where no PII is in the SLDS.

Here is the recommendation from the Fordham Law School Center for Law and Information Policy *Study of Elementary and Secondary State Reporting Systems*:
“Recommendation 1 – **States should implement Dual Database Architecture.** We strongly recommend the use of the dual database structure with clear distinctions made between the local level database and the state level database. For this mechanism to be effective, a third party should maintain the linking key between the local database and the state database. **Teachers and local school officials may have a legitimate educational interest in personally identifiable information, but such individualized information is not generally needed at the state level.** The dual database structure permits local access to needed information while minimizing the privacy risks that arise when personally identifiable information is further distributed to individuals at the state level.

From the research, we identified two major purposes for state level collection and review of children's educational records: (i) compliance with NCLB reporting requirements, and (ii) performance evaluation of schools. **Neither of these justifications for data collection requires that personally identifiable information be provided at the state level.** NCLB's reporting requirements expressly prohibit the public disclosure of personal information, and performance evaluations can usually be done by examining general trends rather than information pertaining to any specific student. Privacy is easiest to maintain when disclosure is limited to a small number of people. Since we find that state information uses do not require the disclosure by local school districts of personally identifiable information, we would advise that a dual database system be used to limit disclosure of such information." [8]

Privacy vs. Security

ODE's testimony discussed security concerns and precautions that ODE is taking. The fact that there has not yet been a data breach does not mean that there will not be a breach in the future. In fact, large centralized databases increase the risk of a data breach or misuse. Additionally children are more vulnerable than adults, and many times more likely to be the victim of identity theft. [9] In the event of a breach, will students be left on their own to recover from identity theft or misuse? Recovery costs thousands of dollars and can take years. FERPA does not provide for compensation to victims.

Students should have a right to privacy. Aggregated data that is held at the state level can provide valuable information to policy makers, but a student's individual record with their personally identifiable information should not be collected or retained by the State. Attending public school should not mean that a student gives up their right to privacy. Individual student data should not be viewed or used as a commodity [11].

Invest in Proven Solutions

The increased data collection on students in the SLDS is for the purposes of big data analytics. Big data analytics is said to hold promise but there are no guarantees and there are risks.[10] Policy makers need to think in practical terms of what are the ethical ramifications as well as the financial costs for new technologies. In the meanwhile, there are other tools available to policy makers. We already have a great deal of data on students and there is considerable research on what works best for improving student achievement. The National Education Policy Center brief *Research-Based Options for Education Policymaking* [12] is an excellent summary of proven policies to improve educational outcomes for students.

Summary

Data is an important tool but student safety, security and civil rights must be our highest priority. Student privacy safeguards will not happen by accident and must be carefully and thoughtfully built into the system. I am pleased to see this Committee consider

legislation regarding student data privacy and I appreciate the opportunity to submit comments on this very important issue. I urge swift passage of HB 4062.

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1) *Amassing Student Data and Dissipating Privacy Rights* by Marc Rotenberg and Khaliah Barnes, Electronic Privacy Information Center

<http://www.educause.edu/ero/article/amassing-student-data-and-dissipating-privacy-rights>

2) **National School Boards Association Letter to USDE 5/23/11**

“...nothing in the FERPA statute states that a State or local educational authority or any agency headed by an official listed in §99.31(a)(3) have authority to receive non-consensual PII from one education agency or institution to evaluate another educational agency or institution.”

<https://www.nsba.org/SchoolLaw/Issues/FERPA-Comments.pdf>

3) **American Association of Collegiate Registrars and Admissions Officers Letter to USDE 5/23/11**

“The Department is arbitrarily expanding the number of entities that can gain access to personally identifiable information from education records, the reasons why they get access, and what they may do with the information they collect, even over the objections of the custodians of those records.

We are dismayed by the Department’s disregard for privacy rights, as well as its failure to consider the impossible compliance environment these proposed regulations would create.

http://www.nacua.org/documents/FERPA_AACRAOLetterMay2011.pdf

4) **American Civil Liberties Union Letter to USDE 5/23/11**

“The NPRM poses serious privacy concerns. Personally identifiable student records include extremely sensitive information about individuals, yet these rules significantly expand the number of parties who can access a record without requiring consent from the parent or the student. These new parties include state officials not working directly on education as well as private entities that would not traditionally be able to access government educational records. Furthermore, the expansion of access to student records could eventually lead to sharing among states. If this were to happen, it could lead to the creation of an immense database holding sensitive information about most Americans.”

http://www.aclu.org/files/assets/ACLU_Comments_on_Changes_to_the_Family_Educational_Rights_and_Privacy_Act_FERPA.pdf

5) **American Council on Education Letter to USDE 5/23/11**

“...we believe the proposed regulations jeopardize important FERPA protections by expanding the number of individuals who may access personally identifiable information without consent, the basis on which they may obtain that access and the ability to re-disclose it to other parties...the proposed regulations unravel student privacy protections in significant ways that are inconsistent with congressional intent. ...We are very concerned that the NPRM greatly increases the number of agents acting on behalf of the statutorily-designated entities, while it simultaneously removes the requirement that the authority to collect such data for audit, evaluation or compliance or enforcement purposes must be established by federal, state or local law.

<http://www.acenet.edu/news-room/Documents/Comments-on-the-NPRM-for-the-Family-Educational-Rights-and-Privacy-Act.pdf>

6) National Association of Independent Colleges and Universities Letter to USDE 5/23/11

“NAICU believes it is essential that the privacy of student educational records be protected and has strongly supported FERPA since our founding. We are deeply troubled, therefore, to see that these proposed regulations turn the basic purpose of FERPA on its head. Rather than focusing on protection of privacy, the proposal instead opens new avenues for sharing personal information without the knowledge or consent of the individuals involved.”

http://www.nacua.org/documents/FERPA_NAICULetterMay2011.pdf

7) Fordham Law School Center for Law and Information Policy Letter to USDE 5/23/11

“It is, thus, very surprising and disturbing that the Department is proposing changes to the FERPA regulations that dramatically expand the disclosure exceptions thereby authorizing the increased sharing of personally identifiable students’ data without addressing significant privacy safeguards and the Congressional policy and specific legislative mandates to protect students’ privacy. In essence, the changes significantly weaken privacy protection for children’s educational records and contravene Congress’ stated intent in FERPA, the COMPETES Act and the American Recovery and Reinvestment Act of 2009 (the “ARRA”)”.

http://law.fordham.edu/assets/CLIP/CLIP_Comments_on_FERPA_NPRM.pdf

8) *Children’s Educational Records and Privacy – A Study of Elementary and Secondary School State Reporting Systems* by Fordham Law School Center for Law and Information Policy

http://law.fordham.edu/assets/CLIP/CLIP_Report_Childrens_Privacy_Final.pdf

9) Carnegie Mellon Cylab report on “Child Identity Theft”

<http://www.cylab.cmu.edu/files/pdfs/reports/2011/child-identity-theft.pdf>

10) *Big Data in Education: Big Potential or Big Mistake* by Sara Briggs

<http://www.opencolleges.edu.au/informed/features/big-data-big-potential-or-big-mistake/>

11) *Student Data is the New Oil: MOOCs, Metaphor, and Money* by Audrey Watters

<http://hackeducation.com/2013/10/17/student-data-is-the-new-oil/>

12) *Research Based Options for Education Policymaking*, National Education Policy Center

<http://nepc.colorado.edu/publication/options>