

American Association of Collegiate Registrars and Admissions Officers



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May 8, 2008

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

**Re: March 24, 2008 Notice of Proposed Rulemaking
Family Educational Rights and Privacy Act of 1974, as amended
Docket ID ED-2008-OPEPD-0002**

Dear Mr. Rooker,

On behalf of the American Association of Collegiate Registrars and Admissions Officers, I write to submit the following comments on the notice of proposed rulemaking (NPRM) published in the *Federal Register* on March 24, 2008.

As you are well aware, AACRAO represents campus professionals with primary responsibility for management of academic records and for operational compliance with FERPA. We appreciate the collegial and consultative manner in which the Family Policy Compliance Office (FPCO) has interpreted and regulated FERPA under your leadership, and are particularly grateful for your tireless efforts at outreach and training as the best method of promoting our shared interest in compliance and in protection of academic records.

The March 24, 2008 NPRM exemplifies the FPCO's careful and measured regulatory approach to the challenging task of protecting the privacy rights of students while enabling institutional practices that promote efficiency and improve service to students. The proposed regulations are a timely update to existing regulations, and incorporate legislative changes, court decisions, and administrative and enforcement findings of your office. In reviewing the proposed regulations, we found little to disagree with and few surprises. By codifying recent statutory, judicial, and administrative developments into the regulations, the package will, upon final adoption, serve as a significant clarification of FERPA and thus improve the ability of institutions to interpret and comply with FERPA. We are very pleased to offer our support of the proposed package, but would

like to respectfully express several concerns for your consideration before final regulations are promulgated.

§99.3 Definitions

Directory Information

The proposed regulations explicitly prohibit institutions from designating students' Social Security Numbers (SSNs) or official student identification (ID) numbers as directory information, but allow for designation of user ID numbers as directory information if such user IDs cannot, by themselves or in combination with other easily obtainable means, be used to access educational records. We certainly support this prohibition with regard to SSNs; and we support the analysis that bans designating certain student ID numbers as directory. But, we respectfully disagree with the proposed regulations' outright ban on designating anything labeled as a student ID number as directory, and suggest that the distinction between Student ID and user ID numbers is chiefly a semantic difference. We urge the Department to simply prohibit the designation of any identification scheme that can, by itself, be used to gain access to educational records, and suggest that what such schemes are labeled need not be referenced in the regulations.

Personally Identifiable Information

The proposed regulations remove existing language about personal characteristics and other information that would make the student's identity "easily traceable" and focus instead on information that, alone or in combination, would allow a reasonable person *in the school or its community* to identify the student. While we believe that we understand the Department's purpose in making this revision, we believe the language needs significant clarification. We believe that restricting the scope of inappropriate identification to only the school or its community can do irreparable harm to privacy interests, and respectfully suggest that the language be revised to prohibit disclosure of information that can, alone or in combination, allow *any* reasonable person, regardless of their location, to gain unauthorized access to educational records.

§99.31 Authorized Disclosures Without Prior Written Consent

(a)(1) School Official: Outsourcing

Current regulations allow institutions to disclose information from educational records to institutional officials with a legitimate educational interest. The proposed regulations would expand this exception to include contractors, consultants, volunteers, and other outside parties to whom an agency or an institution has outsourced services or functions that it would otherwise provide or perform in-house, provided that institutions retain direct control on their agents. We support and welcome this clarification. We are concerned, however, that the proposed regulations do not go far enough to clarify that such outside third-parties may not engage in extraneous activities—such as data-mining

or intramural research—on educational records of multiple institutions for which they may serve as agents. In addition, we believe institutions should be required to verify that any outside third-party to whom educational records are entrusted have the necessary technological, administrative, and financial resources to act as legitimate agents of the institutions, safeguard educational records, and indemnify institutions for potential violations.

(a)(6) Organizations Conducting Studies for or on Behalf of Institutions

The proposed regulations attempt to expand on the underlying statutory language authorizing disclosure of educational records to organizations conducting studies “for, or on behalf of” institutions. While we appreciate the guidance provided in the proposed regulations, we believe substantially more clarification is needed to ensure that this exception does not end up serving as a loophole.

We are particularly concerned about the terms of any agreements, their scope and their duration. For example, the proposed regulations allow *all* representatives of the organization conducting the study to have access to personally identifiable information from educational records, regardless of whether granting such access is necessary or appropriate. As such, the proposed regulations allow outside organizations to grant unfettered internal access to data to their employees. We urge the Department to restrict individual access to personally identifiable records within research organizations to those individuals with a legitimate interest in the information.

We are concerned about multi-institutional research projects, and would welcome additional clarification and safeguards on data-warehousing, data-mining, and individual tracking of students across multiple institutions. We would urge the Department to specifically limit this exception to bona fide research projects by prohibiting the operational or commercial utilization of record-level data in possession of such organizations.

We are also concerned about the duration of research projects, which, in the case of longitudinal studies, could span decades. We believe significantly more restrictive access should be granted for studies that track personally identifiable information for long periods of time, and would welcome an actual time limit on longitudinal studies.

Finally, we believe that participation in any longer-term, long-scale projects that result in disclosure and lengthy retention of educational records to third parties should be included in the annual FERPA notification.

§99.35 Re-disclosure of Educational Records by Federal and State Officials

The proposed regulations allow officials and authorities listed in §99.31(a)(3) to take advantage of the exception in §99.33(b) and re-disclose personally identifiable information from educational records directly to a qualified recipient under one of the exceptions listed in §99.31 instead of referring that party to the school district or institution that submitted the records.

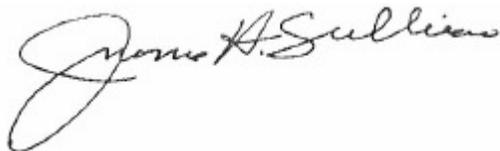
We are quite disturbed by this unwarranted expansion, which, if promulgated in final regulations, would nullify some of the most fundamental premises of FERPA. The proposed regulations would allow the officials and authorities listed in 99.31(a)(3) to set up and operate record systems containing personally identifiable information, the very existence of which would be a secret to the individuals whose records they contain. Students, of course, would have no right to review or amend these records. We respectfully urge the Department to reconsider this proposed change, and, at the very least, require entities that maintain such data to provide students with annual notification and the right to review and amend their records. In response to the specific question on which the Department seeks comments, we certainly believe that the requirements of §99.32(b) should not be waived or delegated to the officials or entities that obtain and maintain records under §99.31(a)(3), and that the original education record should be amended to record any authorized re-disclosures.

We are gravely concerned about the prospects of complete loss of control on the part of students and institutions, and the high likelihood that re-disclosures authorized under the proposed regulations will take on a life of their own. We hope the Department will either drop this proposed change, or provide significantly greater restrictions and clarification to ensure that re-disclosures would not undermine privacy interests of students.

AACRAO is pleased to have been provided this opportunity to share the perspective of campus records officials with the Department, and remains, as always, ready to work with you and your staff in any way we can. We are quite pleased with the proposed package overall, and look forward to an even better package of final regulations.

Sincerely,

Sincerely,

A handwritten signature in cursive script, reading "Jerome H. Sullivan". The signature is written in black ink and is positioned above the printed name and title.

Jerome H. Sullivan
Executive Director