

**STATE LONGITUDINAL DATA SYSTEMS AND STUDENT
PRIVACY PROTECTIONS UNDER THE FAMILY
EDUCATIONAL RIGHTS AND PRIVACY ACT**

Prepared for the Data Quality Campaign

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Steven Y. Winnick
Holland & Knight LLP
Steve.Winnick@hklaw.com
(202) 419-2628

Scott R. Palmer
Holland & Knight LLP
Scott.Palmer@hklaw.com
(202) 419-2587

Arthur L. Coleman
Holland & Knight LLP
Arthur.Coleman@hklaw.com
(202) 419-2567

Table of Contents

I. EXECUTIVE SUMMARY	3
II. BACKGROUND -- DATA SYSTEMS	7
III. BACKGROUND – FERPA	8
IV. ANALYSIS.....	9
A. PERMISSIBLE DATA ACTIVITIES -- NON-ISSUES.....	9
• Anonymous data.	9
• Evaluation/audit of state and local programs; school & district accountability.	10
• Assessment, enrollment, and graduation data authorized by the No Child Left Behind Act to be linked in a State Longitudinal Data System.	11
• Organizations performing studies to improve instruction.	12
• Sharing student records with school in which student newly enrolls or intends to enroll.....	12
• Maintaining a teacher identification system that links teachers and students.	12
• Recording disclosures.	12
B. UNRESOLVED ISSUES	13
FOUNDATIONAL QUESTION FOR ANSWERING UNRESOLVED ISSUES.....	13
STATE LONGITUDINAL DATA SYSTEM-RELATED FERPA ISSUES THAT HAVE NOT BEEN CLEARLY RESOLVED.....	16
• <i>May personally identifiable information be provided to a state data warehouse for the purpose of tracking the progress of the individual student, diagnosing the student's individual needs, and planning appropriate programs and interventions to improve instruction for the student?</i>	16
• <i>May personally identifiable information obtained by the state longitudinal data system be re-disclosed to schools or other organizations?</i>	18
• <i>May personally identifiable information be disclosed to organizations that initiate their own studies related to improvement of instruction?</i>	21
• <i>May a school or local educational agency registering a new student have access to limited information in a state longitudinal data system for all students with the same name in order to ensure that it properly identifies and obtains the correct records for the new student.</i>	22
V. POSTSECONDARY INSTITUTIONS.....	23
VI. NEXT STEPS.....	25
VII. CONCLUSION	27

Many states and national associations are moving to install or support statewide longitudinal data systems to permit more effective measurement of educational effectiveness and delivery of educational services to students. Educators and policymakers have come to understand that when states collect the most relevant data and are able to match individual student records over time, they can answer the questions that are at the core of educational effectiveness. Access to these data—

- Gives teachers the information they need to tailor instruction to help each student improve;
- Gives administrators resources and information to effectively and efficiently manage; and
- Enables policymakers to evaluate which policy initiatives show the best evidence of increasing student achievement.

The U.S. Department of Education's (USED's) Institute of Education Sciences made grants to fourteen states during the past year to develop and implement state longitudinal data systems.

Concerns have been raised about whether the federal Family Educational Rights and Privacy Act (FERPA) prevents or significantly hampers effective use of these systems to accomplish their objectives.¹ *Two principles are critical and need to be harmonized: (1) states, local school districts, schools, and colleges and universities need to make fuller use of student data to effect educational reforms and better meet the needs of individual students; and (2) students' privacy rights and the rights of parents to protect their children need to be preserved.* At the request of the Data Quality Campaign, Holland & Knight LLP has prepared this paper to address how a state longitudinal data system can align these principles and comply with FERPA, with regard to student data at all levels of education, pre-kindergarten through postsecondary education.²

I. Executive Summary

General. To provide educators and policymakers with the data they need to improve student achievement, states may establish longitudinal data systems that contain the 10 Essential Data Elements outlined by the Data Quality Campaign. Collection and use of data by a state longitudinal data system consistent with these 10 elements are in compliance with FERPA, as outlined below.

- Anonymous Data. First, without invoking any of the authorized disclosures in the law, FERPA permits states, using unique student identifiers and without written parental consent, to collect, maintain, analyze, and disclose anonymous data derived from students' education records, so long as the data are not easily traceable to individual students. That is because FERPA only limits disclosure of personally identifiable information related to individual students. A state longitudinal data system would be free

¹ FERPA is Section 444 of the General Education Provisions Act, 20 U.S.C. § 1232g.

² The privacy laws of individual states are not addressed in this paper.

to use anonymous data for evaluations, school and district accountability determinations, and studies, and to share the data with third parties for these purposes. A state longitudinal data system also could share these data broadly with the public.

- Personally Identifiable Data. Second, assuming that data from students' education records are easily traceable to individual students (such as in the case of very small cell sizes), are obtained initially by a state longitudinal data system in personally identifiable form, or on occasion must be released by a state longitudinal data system in personally identifiable form (for example, to a student's new school), FERPA includes specific authorized disclosures that relate to the core functions of a state longitudinal data system. These include:
 - Program Evaluations & Audits; Accountability. FERPA permits states – without written parental consent – to obtain personally identifiable information from students' education records in order to evaluate and audit both state and federal programs and to implement federal requirements. Thus, there is no question that personally identifiable information may be collected and used by state education authorities and their contractors to make accountability decisions for local educational agencies and schools; and to analyze the progress of districts, schools, programs, and teachers in carrying out their functions. (A state longitudinal data system could publish anonymous data in reporting on these matters to the public and could provide anonymous data to independent researchers. Also, see discussion of disclosures for studies, below)
 - Assessment, Enrollment & Graduation Data. It is also clear under the No Child Left Behind Act that a state longitudinal data system may collect personally identifiable information regarding student performance on state assessments, enrollment, and graduation, and make assessment data available to schools attended by the student.
 - Tracking Students, K-16, and Meeting their Individual Needs. FERPA is somewhat less clear on whether the state through a state longitudinal data system may collect and disclose to schools other personally identifiable information to be used to track individual students and to diagnose and meet the educational needs of individual students. However, there are two alternative analyses for providing an affirmative answer to this question.
 - First, there is a very strong legal argument that a state longitudinal data system *may maintain education records on behalf of local educational agencies and schools and, acting for them, analyze the information and disclose it to schools currently attended by the students* to be used for these purposes. This interpretation is consistent with the language of FERPA; violates no articulated interpretation of FERPA by the U.S. Department of Education; and harmonizes FERPA and provisions in the Education Sciences Reform Act and No Child Left Behind Act specifically recognizing and providing financial support for state

longitudinal data systems to perform these functions. Maintenance of education records by a state longitudinal data system for local educational agencies and schools would not constitute a disclosure outside of the local educational agency or school for FERPA purposes.

- Second, even if a state longitudinal data system is not regarded to be maintaining and analyzing records on behalf of local educational agencies and schools, the records may be provided to a state longitudinal data system by the local educational agency or school as an authorized disclosure for the purpose of a study to improve instruction. That authorized disclosure may be applied not only to broad studies benefiting many students, but also to use of the data to study how to improve instruction for individual students.
- Disclosures to Schools. Under the former analysis above, whereby a state longitudinal data system maintains records for the local educational agency or school, a state longitudinal data system, on behalf of the local educational agency or school currently attended by a student, may disclose personally identifiable information to a school in which the student newly enrolls or seeks to enroll, including a move of the student from a K-12 system to a postsecondary educational institution or to a school in another state. If a state longitudinal data system is not deemed to be maintaining records for the local educational agency or school, an issue is presented as to whether the longitudinal data system may re-disclose the personally identifiable information. FERPA includes an express bar on re-disclosures. However, there is a legal argument that the longitudinal data system may re-disclose as long as the purpose and recipient of the re-disclosure come within any authorized disclosure in FERPA. The argument here is that FERPA was not intended to bar re-disclosures that fully meet the requirements applicable to initial disclosures. This approach would likely require U.S. Department of Education regulatory action to be firmly established.

FERPA does not expressly authorize disclosure of personally identifiable information to a student's previous school, but such a disclosure could be made if it were incidental to an evaluation of state or federal programs or a study to improve instruction. For example, if the personally identifiable information were provided to the student's former school so that the school could perform a self-examination of its instructional programs, that would be permissible.

- Disclosures for Studies.
 - General Scope. Personally identifiable information also may be disclosed to other organizations performing a study for a local educational agency or school to improve instruction. The U.S. Department of Education in letters has expressed the interpretation that to come within this authorized disclosure, it is not enough that a study undertaken by another organization may benefit the local educational agency or school. The

study must be authorized by the local educational agency or school. This authority may be implemented to include disclosing personally identifiable information to organizations for independently initiated studies by promulgating state regulations or guidelines that provide a process for authorizing studies initiated by third parties in which the local educational agency or school has a clear interest (whether or not it funds the study) and including strong privacy protections against re-disclosure, consistent with FERPA. This would in effect implement the U.S. Department of Education's articulated interpretation of this disclosure provision.

- **Disclosures by State Longitudinal Data System for Studies.**
 - To the extent that a state longitudinal data system is acting for local educational agencies and schools in maintaining and analyzing education records, the longitudinal data system may enter into this type of agreement to authorize a study and disclose personally identifiable information pursuant to it. Since a state longitudinal data system would be acting on behalf of the local educational agency or school, this would not constitute a re-disclosure that would raise questions under FERPA provisions barring re-disclosures.
 - If a state longitudinal data system is not maintaining and analyzing education records on behalf of local educational agencies and schools, there is a closer legal question whether this type of arrangement for re-disclosing personally identifiable information may be made by the longitudinal data system rather than the local educational agency or school. As noted above, there is a legal argument to support permitting re-disclosures by the longitudinal data system, provided the re-disclosure comes within an authorized FERPA disclosure. However, as applied to the study provision, there is an additional issue as to whether a state that is not maintaining and analyzing records for the local educational agency or school could authorize a study for or on behalf of the local educational agency or school for purposes of this provision. The argument favoring this authority would be that the state educational agency may authorize the study for or on behalf of local educational agencies or schools for FERPA purposes pursuant to its general oversight authority.
- **Treating limited information as “directory information” to correctly identify new students.**
 - States have indicated that schools and local educational agencies have a need for access to limited personally identifiable information about students with the same name as a student who is newly enrolling in the school or district, in order to ensure that they obtain education records for the right student.

- A state may issue regulations that define date and place of birth, name of parent, and current and former addresses as “directory information” for the limited purpose of permitting schools or districts registering the new student to check that information for all students with the same name.

Matching of Postsecondary and Elementary and Secondary Records. Many postsecondary institutions, particularly independent colleges and universities, may not be prepared to vest in a state longitudinal data system responsibility to maintain some of their education records. This does not bar these institutions from participating with a state longitudinal data system in matching education records for appropriate purposes, consistent with authorized disclosures in FERPA, as discussed in this paper.

II. Background -- Data Systems

There is a growing recognition among states and national policymakers, educators, and researchers of the need to develop and maintain state longitudinal data systems that will permit state and local educational authorities and schools to track student progress from pre-school through postsecondary education levels. Education has come under increasing attack for not being evidence-based, including a lack of hard information in educational agencies and institutions as the basis for decisions about schools, teachers, students, and programs.

In 2005, a national collaborative effort – named the Data Quality Campaign – was initiated with the goal of developing a high quality state longitudinal data system in every state by 2009.³ As the Data Quality Campaign indicates in its materials, these systems are needed to permit states to use student data to evaluate schools, educational programs, and teachers; to make decisions about programs and to hold schools and districts accountable for their performance under federal and state laws; and to identify and address the educational needs of individual students. The Data Quality Campaign identifies ten essential elements of a state longitudinal data system:

1. A unique statewide student identifier
2. Student-level enrollment, demographic, and program participation information
3. The ability to match individual students' test records from year to year to measure academic growth
4. Information on untested students
5. A teacher identification system with the ability to match teachers to students
6. Student-level transcript information, including information on courses completed and grades earned
7. Student-level college readiness test scores
8. Student-level graduation and drop-out data

³ The Data Quality Campaign is supported by the Bill & Melinda Gates Foundation, is managed by the National Center for Educational Accountability, and includes as founding partners Achieve, Inc., the Alliance for Excellent Education, Council of Chief State School Officers, Education Trust, 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, and State Higher Education Executive Officers.

9. The ability to match student records between the pre-K and postsecondary systems
10. A state audit system assessing data quality, validity, and reliability.⁴

The Data Quality Campaign also emphasizes the need to link a state longitudinal data system with employment and other data systems; to transfer records across states; and to protect student privacy. A number of states are also moving to incorporate data on spending in their longitudinal data system.

III. Background – FERPA

In addition to giving parents rights to inspect and challenge the contents of their children's education records, FERPA prohibits educational agencies and institutions that receive program funds from the U.S. Department of Education from disclosing students' education records⁵ or personally identifiable information about students contained in those records⁶ without written parental consent,⁷ unless the disclosure comes within one or more of a list of statutory exceptions.⁸ There are two overall circumstances in which information from students' education

⁴ See <http://www.dataqualitycampaign.org/>

⁵ "Education records" are defined generally in FERPA as those records, files, documents, and other materials that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. 20 U.S.C. § 1232g(a)(4).

⁶ "Personally identifiable information" is defined in FERPA regulations to include – (a) The student's name; (b) The name of the student's parent or other family member; (c) The address of the student or student's family; (d) A personal identifier such as the social security number or student number; (e) A list of personal characteristics that would make the student's identity easily traceable; or (f) Other information that would make the student's identity easily traceable. 34 C.F.R. §99.3. Thus, the privacy protections in FERPA would apply not only to information that on its face expressly identifies an individual student, but also to other information that would be easily traceable to an individual student. For example, if there were five students with disabilities who participated in state assessments in the 3rd grade of a particular school, and none of them scored at a proficient level on the assessments, reporting that fact would, in effect, divulge that each of these individuals had failed to achieve a proficient score. Absent parental consent or a disclosure authorized in FERPA, a state longitudinal data system would need to have masking techniques or suppress minimum cell sizes for such data to avoid unauthorized disclosure of personally identifiable information.

⁷ FERPA provides that once a student reaches the age of eighteen or is attending a postsecondary institution, the consent required of and the rights accorded to parents under FERPA shall thereafter only be required of and accorded to the student. 20 U.S.C. § 1232g(d). All references in this memorandum to parents are intended to apply to the student him/herself once either of these conditions is met.

⁸ The exceptions include, for example: directory information such as name, address, birth-date, major field of study, etc. designated by the local educational agency or school, unless the parent has notified the local educational agency or school that some or all of directory information should not be released without the parent's consent, 20 U.S.C. § 1232g(a)(5), (b)(1); officials of other schools in which the student seeks to enroll, subject to parent notification and the right to contest the content of the record, 20 U.S.C. § 1232g(b)(1)(B); representatives of the Attorney General for law enforcement purposes, 20 U.S.C. § 1232g(b)(1)(C); representatives of the U.S. Comptroller General, the U.S. Secretary of Education, and the state educational authorities for audit and evaluation of state and federal programs and for enforcement of federal program requirements, subject to destruction of records when no longer needed, 20 U.S.C. § 1232g(b)(3), (b)(5); organizations conducting studies for or on behalf of local educational agencies or schools for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, subject to destruction of records when no longer needed, 20 U.S.C.

records may be disclosed consistent with FERPA without written parental consent: either the information is not personally identifiable, such as anonymous data or aggregated data derived from multiple education records, or the disclosure comes within one of the FERPA exceptions.

In *Gonzaga University v. Doe*, 536 U.S. 273 (2002), the U.S. Supreme Court ruled that there is no right for parents or others to sue a school or educational agency for alleged violations of FERPA. Remedies are available for a violation of FERPA only through administrative enforcement by the U.S. Department of Education. This means that the Department, not the courts, in practice is the principal arbiter of what FERPA intends. The ultimate potential sanction for violations of FERPA is a cut-off of federal funds received from the U.S. Department of Education. However, the statute requires the Department to seek voluntary compliance by an educational agency before seeking any funding remedy.⁹ Also, if the U.S. Department of Education seeks to cut off federal funds based on a violation of FERPA, that action may be challenged in an administrative hearing and subsequently in a federal court of appeals.

IV. Analysis

This paper summarizes below — (A) data collection and disclosure practices relevant to a state longitudinal data system that are clearly permissible under FERPA and (B) areas where issues remain as to what is permissible under FERPA. Where issues remain, legally sound, reasonable interpretations of FERPA and recommended approaches are discussed. A separate section at pp. 23-25 discusses how postsecondary institutions may match records with a state longitudinal data system, consistent with FERPA, without compromising their independence in maintaining their own education records.

A. Permissible Data Activities -- Non-Issues

- Anonymous data. FERPA clearly authorizes schools, local educational agencies, and state educational authorities to disclose to third parties, including the public, anonymous data on students that do not disclose personally identifiable information. Thus, a local educational agency or school may disclose to a state data warehouse such anonymous data on students that do not permit the personal identification of a student, and a state longitudinal data system may release anonymous data to others, whether these data were first obtained by the longitudinal data system from the local educational agency or school as anonymous data or as personally identifiable information on one of the other bases discussed in this paper.

§ 1232g(b)(1)(F); accrediting organizations in order to carry out their accrediting functions, 20 U.S.C. § 1232g(b)(1)(G); subject to regulations of the Secretary of Education, in connection with an emergency, appropriate persons if necessary to protect the health or safety of the student or other persons, 20 U.S.C. § 1232g(b)(1)(I); in connection with a student's application for, or receipt of, financial aid, 20 U.S.C. § 1232g(b)(1)(D); and in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders and subpoenas in advance of compliance therewith by the educational agency or institution, 20 U.S.C. § 1232g(b)(2)(B).

⁹ 20 U.S.C. § 1232g(f).

- A local educational agency or school or a state longitudinal data system may create a non-personal identifier for the student and use that identifier alone to create an anonymous data file for the student. That data file would be disclosable without parental consent and without regard to the specific disclosure exemptions in FERPA if – (a) the identifier is not a social security number (or a scrambled version of that number) or student ID number; (b) the identifier cannot be linked to an individual student except by a linking key that is itself protected from disclosure under FERPA; and (c) the anonymous data file is populated by data from the student's education records that are not easily traceable to the student (for example, based on small group cell size).¹⁰ Similarly, a local educational agency or school may disclose aggregate data that are not easily traceable to individual students.
- Creation of a unique student identifier for each student has been identified as a central element of a state longitudinal data system. This should permit a state longitudinal data system in many cases to disclose student information derived from education records without regard to the specific authorized disclosures in FERPA, provided there are safeguards against sharing data that are easily traceable to individual students, consistent with generally accepted statistical principles and methods.
- Evaluation/audit of state and local programs; school & district accountability. FERPA clearly authorizes state educational authorities to have access to personally identifiable information at all levels of education in order to evaluate or audit federal and state programs and to meet federal requirements related to those programs.¹¹ (These authorized disclosures are subject to requirements that the personally identifiable information not be re-disclosed beyond authorized representatives of state educational authorities and be destroyed when no longer needed for that purpose.) There is no specific time limit for destroying these education records. State educational authorities may continue to maintain them as long as they continue to be needed for continuing or prospective evaluations or audits, including longitudinal school and district accountability determinations.
 - Thus, there is no violation under FERPA in creating a state data warehouse, obtaining for the warehouse personally identifiable information on students at all levels of education contained in their education records, without written parental consent, and using these data to evaluate schools, districts, state postsecondary institutions, teachers, and programs, including making accountability determinations under federal and state laws.
 - Under established U.S. Department of Education interpretations, that personally identifiable information may be reviewed by state educational

¹⁰ Letter of November 18, 2004, to Matthew J. Pepper of the Tennessee Department of Education from LeRoy S. Rooker, Director of the Family Policy Compliance Office, USED.

¹¹ 20 U.S.C. § 1232g(b)(1)(C); (b)(3); (b)(5).

employees who administer the data warehouse or perform these evaluation, audit, or accountability functions and by state agency contractors who are engaged to administer the data warehouse or to assist in performing these evaluation, audit, or accountability functions.¹²

- Assessment, enrollment, and graduation data authorized by the No Child Left Behind Act to be linked in a State Longitudinal Data System. Section 1111(b)(3)(B) of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act, expressly authorizes state longitudinal data systems to link student test scores, length of enrollment, and graduation records over time.¹³ The No Child Left Behind Act also vests in states the responsibility to administer assessments required under law and to provide diagnostic reports on individual students to parents, teachers, and principals.¹⁴
 - It is clear under these authorities that a state, without parental consent, may collect and store in a data warehouse personally identifiable information regarding individual student performance on state assessments, enrollment, and graduation, and may share information on student assessment results with schools attended by the students.
 - Once these data become part of the education records of a student maintained by a local educational agency or school, they are subject to FERPA protections and may not be further disclosed, except to the extent consistent with FERPA.¹⁵ However, based on the subject No Child Left Behind Act provision, the state may continue to use these data not only to evaluate programs, but also to track individual students and diagnose and address their individual needs and achievements, and they may share this personally identifiable information with schools attended by the student, including postsecondary schools. Collection of the personally identifiable information and its disclosure to schools attended by the students is "specifically authorized by Federal law."¹⁶
 - The state also may enter into contracts to maintain and analyze these data, subject to protections that the contractor not further disclose personally identifiable information.

¹² Letter of February 18, 2004, to Dr. Allan M. Lloyd-Jones of the Special Education Office, California Department of Education, from LeRoy S. Rooker, Director, Family Compliance Office, USED.

¹³ 20 U.S.C. § 6311(b)(3)(B).

¹⁴ 20 U.S.C. § 6311(b)(3)(C)(xii).

¹⁵ 20 U.S.C. § 7903.

¹⁶ 20 U.S.C. § 1232g(b)(3).

- Organizations performing studies to improve instruction. FERPA clearly authorizes disclosure by local education agencies or schools of students' personally identifiable information, without written parental consent, to organizations with which they have contracted or made other arrangements to perform for them or on their behalf studies, among other things, to improve instruction (subject to limits on re-disclosure and destruction of personally identifiable data when no longer needed for this purpose).¹⁷ As discussed at pp. 21-22, below, there is an unresolved issue as to the scope of this authorized disclosure and whether it would apply to organizations that initiate their own studies related to the improvement of instruction. As also discussed at pp. 18-21, below, there is a separate issue relating to whether provision of this personally identifiable information by a state longitudinal data system would constitute a re-disclosure and, if so, whether that would be authorized.
- Sharing student records with school in which student newly enrolls or intends to enroll. Students' personally identifiable information may be passed on from students' prior schools to their current schools, including for students who have moved from secondary education to postsecondary education, or from one district or one state to another. This is subject to notice to parents and the right of parents to contest the content of the records.¹⁸ See discussion at pp. 18-21 below regarding the authority of a state longitudinal data system to make these school-to-school transfers of a student's longitudinal education record.
- Maintaining a teacher identification system that links teachers and students. Neither FERPA nor any other federal law generally protects the privacy of information about teachers. It is possible that information about which teachers a student is assigned to would be directory information relating to the student that could be publicly reported under FERPA, although the U.S. Department of Education appears not to have addressed this issue. If it is not directory information, an educational agency did not treat it as directory information, or a parent asked that, despite its status as directory information, it not be released without parental consent; its collection, use, and disclosure by a state longitudinal data system would need to be examined under the other principles described in this paper. For example, data linking teachers with students they teach could be disclosed to state education authorities for evaluation of programs, including measuring teacher performance based on the progress of their students.
- Recording disclosures. Under FERPA, any disclosures and requested disclosures of personally identifiable information, without written parental consent, beyond the local education agency or school must be recorded, and the recording must be kept with the education records of each student.¹⁹ In the case of disclosures, the record must

¹⁷ 20 U.S.C. § 1232g(b)(1)(F).

¹⁸ 20 U.S.C. § 1232g(b)(1)(B).

¹⁹ 20 U.S.C. § 1232g(b)(4)(A).

indicate the authorized exception permitting the disclosure. These access records are available only to parents, education officials who have custody of the records, and state and federal officials who audit these requirements. A state longitudinal data system should have automated, electronic methods for making and maintaining these records.

B. Unresolved Issues

There are four FERPA issues that have not been clearly resolved relating to state longitudinal data systems:

- The authority of local educational agencies and schools, without written parental consent, to provide personally identifiable information to a state longitudinal data system for the purpose of tracking individual students and planning appropriate programs and interventions for these students;
- The authority of the state longitudinal data system to disclose or re-disclose personally identifiable information generally to other organizations, in light of FERPA provisions that generally prohibit recipients of disclosures from re-disclosing personally identifiable information absent parental consent;²⁰
- The scope of the authority to disclose personally identifiable information to organizations for studies; and
- The authority of a school or local educational agency registering a new student to access limited information from the state data warehouse – such as date and place of birth, current and former addresses, and name of parent – for all students with the same name, in order to ensure that the school or local educational agency obtains education records for the right student.

Approaches for resolving each of these issues are recommended below, without overturning or disturbing FERPA precedents issued by the U.S. Department of Education's Family Policy Compliance Office, which administers FERPA.

Foundational Question for Answering Unresolved Issues

These issues turn in part on the foundational question of whether the initial storage of personally identifiable information in a state longitudinal data system should itself be viewed as a disclosure outside of the local education agency or school or, alternatively, whether a state longitudinal data system can be understood to be maintaining education records for each of the local educational agencies and schools in the state. We believe the latter proposition generally to be the case – for local educational agencies and elementary and secondary schools – and to resolve the first two of the four unresolved issues.

The State Longitudinal Data System may properly be understood as maintaining education records for local educational agencies and schools, not as a separate recipient

²⁰ 20 U.S.C. § 1232g(b)(4)(B).

of a disclosure of education records. Indeed, that is the essential nature of a state longitudinal data system – to unify and debalkanize maintenance of the records of local educational agencies and schools needed for assessing and improving local educational agencies, schools, educational 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 public schools and local educational agencies within the state. And state educational authorities are expressly covered by FERPA protections. FERPA provisions define the term "education records" as records maintained by an educational agency or institution, "**or by a person acting for such agency or institution.**"²¹ (emphasis supplied) Nothing in the law or in logic would prohibit a state longitudinal data system from acting for a local educational agency or elementary or secondary school in maintaining its education records. As a legal matter, that is also true for postsecondary institutions, and some state postsecondary institutions may elect to have a state longitudinal data system act for them in maintaining their education records. But many postsecondary institutions are likely to have concerns about compromising their independence if a state longitudinal data system maintains records for them. A separate section at pp. 23-25 discusses how postsecondary institutions may match records with a state longitudinal data system consistent with such concerns.

Consistency with U.S. Department of Education precedent. A memorandum and letter issued by the U.S. Department of Education in 2004 at first blush may seem to be, but in fact are not, inconsistent with this analysis.²² These documents addressed use of students' social security numbers to make computer matches between students' education records and unemployment insurance wage data maintained by the state department of labor, in order to meet federal evaluation requirements under the Workforce Investment Act and related statutes. The U.S. Department of Education took the position that the state educational agency needed to conduct the match itself and could not disclose personally identifiable information to the state department of labor, because, unlike a private contractor, the department of labor was not under the control of the state educational agency and could not be considered its authorized representative.

The position taken by the U.S. Department of Education in these documents is not legally binding but, in any event, is distinguishable from the issue of whether a state longitudinal data system may maintain education records for a local educational agency or school. First, the situation addressed by the Department involved an interpretation of language in subsection (b)(3) of FERPA as to who could be an "authorized representative" of state educational authorities for purposes of conducting an evaluation, and the Department's interpretation relied primarily on other language in that provision protecting against disclosure of personally identifiable information to "other than those [state education]

²¹ "Person" is defined in the U.S. Code to include not only an individual human being, but also an organization or agency. 1 U.S.C. § 1.

²² Memorandum of January 30, 2003, to Chief State School Officers, State Directors of Vocational-Technical Education, State Directors of Adult Education, and State Directors of Community, Junior and Technical Colleges from William D. Hansen, Deputy Secretary of Education; Letter of March 25, 2004, to Mr. David R. Powers, Executive Director of the Nebraska Coordinating Commission for Postsecondary Education, from LeRoy S. Rooker, Director, Family Policy Compliance Office, U.S. Department of Education.

officials."²³ That provision is not related to the issue of whether local education agencies and schools may use a state longitudinal data system to maintain education records on their behalf. On the contrary, as noted above, the current issue turns on statutory language that broadly defines education records to be records maintained by an educational agency or institution "or by a person acting for such agency or institution." Second, the situation addressed by the U.S. Department of Education involved sharing data with a state agency (the state labor department) that did not have education responsibilities and was not itself an education agency and statutes that imposed evaluation responsibilities on both the labor and education agencies, making it difficult to conclude that the labor department was acting as an authorized representative of the state educational agency.

Safest to Lodge State Longitudinal Data System in State Education Authority. Nothing in FERPA would limit an agency acting for a local educational agency or school in maintaining its records to an educational agency. Thus, the state longitudinal data system legally could be administered by a state agency other than the state educational agency on behalf of local educational agencies and schools. However, placing the longitudinal data system under the administrative responsibility of a state education authority (and especially the state educational agency for elementary and secondary data) is the safest application of this analysis, since – (1) the role of the state longitudinal data system in analyzing, as well as maintaining, education records on behalf of local educational agencies and schools comports with the state statutory role of the state educational agency to assist local educational agencies and schools; and (2) the U.S. Department of Education is more likely to be comfortable with this analysis and less likely to perceive any conflict with its cited precedents if the state longitudinal data system is maintained by a state education authority.

Harmonizes FERPA with Federal Laws Supporting State Longitudinal Data Systems. Several federal statutory provisions reflect strong congressional support for the development of state longitudinal data systems to improve student academic achievement. Section 153(a)(5) of the Education Sciences Reform Act vests in the National Center for Education Statistics the responsibility to determine voluntary standards and guidelines to assist state educational agencies in developing statewide longitudinal data systems "that link individual student data consistent with the requirements of the [Elementary and Secondary Education Act] . . . , promote linkages across States, and protect student privacy consistent with section 183, to improve student academic achievement and close achievement gaps."²⁴ Section 208 of the Education Sciences Reform Act similarly authorizes the U.S. Department of Education to make grants to state educational agencies to enable such agencies to "design, develop, and implement state-wide longitudinal data systems to efficiently and accurately *manage, analyze, disaggregate and use individual student data,*" consistent with the Elementary

²³ 20 U.S.C. 1232g(b)(3).

²⁴ 20 U.S.C. § 9543(a)(5).

and Secondary Education Act (emphasis supplied).²⁵ In addition, although the No Child Left Behind Act provisions that reference state longitudinal data systems only refer expressly to combining student assessment data with data on length of enrollment and graduation, they implicitly acknowledge and sanction the authority of a state longitudinal data system to maintain and use personally identifiable information related to elementary and secondary schools, incident to the broad purposes of the No Child Left Behind Act. These provisions underscore the need to interpret FERPA in a manner that does not prevent a state longitudinal data system from serving its most fundamental purposes, purposes that are recognized and sanctioned in both the Education Sciences Reform Act and No Child Left Behind Act. Under well-established rules of statutory construction, FERPA needs to be read in harmony with these other statutory provisions. The analysis that a state longitudinal data system is maintaining education records on behalf of each local educational agency or school, and is not the recipient of separate disclosures outside of the local educational agency or school, is the most direct, realistic, and appropriate way to harmonize these laws.

Furthermore, FERPA itself recognizes that a state educational agency may maintain education records for students in the schools of the state. Subsection (a) of FERPA, relating to parent access to inspect the education records of their children, applies expressly to state educational agencies, reflecting Congress's understanding in enacting FERPA that these agencies would maintain education records for children "who are or have been in attendance at any school of an educational agency or institution that is subject to the provisions of this section."²⁶

State Longitudinal Data System-related FERPA Issues that Have Not Been Clearly Resolved

- **May personally identifiable information be provided to a state data warehouse for the purpose of tracking the progress of the individual student, diagnosing the student's individual needs, and planning appropriate programs and interventions to improve instruction for the student?**²⁷
 - FERPA expressly authorizes personally identifiable information to be disclosed to state educational authorities only in connection with the audit or evaluation of any federally or state-supported education program or the enforcement of federal legal requirements that relate to such programs.²⁸

²⁵ 20 U.S.C. § 9607 (a).

²⁶ 20 U.S.C. § 1232g(a)(1)(B).

²⁷ As indicated above, the No Child Left Behind Act authorizes the state to collect data, through its longitudinal data system, on students' performance on state assessments, length of enrollment, and graduation. Much of the data may originate in the state educational agency and not be derived from students' education records. The unresolved issue stated here refers to other personally identifiable information obtained from an education record maintained by a local educational agency or school and not expressly covered by the No Child Left Behind authorization.

²⁸ 20 U.S.C. 1232g(b)(1)(C); (b)(3); and (b)(5).

There is no comparable express provision for state educational authorities to obtain personally identifiable information from local educational agencies or schools, without written parental consent, for other purposes such as tracking the educational progress of individual students and diagnosing and addressing their individual educational needs.

- However, there are strong legal arguments that schools and local educational agencies may provide personally identifiable information to the state data warehouse for the noted purposes of tracking, diagnosing, and addressing the progress and needs of individual students:
 - Maintaining records for the local educational agency or school. Based on the analysis above, we believe there is a compelling argument that a state longitudinal data system may be understood to be maintaining education records for each of the local educational agencies and elementary and secondary schools in the state, absent anything in state law that would bar this interpretation. The longitudinal data system would be analyzing these records to address the needs of individual students for the local educational agency and school in which the student is enrolled and on whose behalf the education records are maintained.
 - "Studies Exception" also authorizes disclosure to the state longitudinal data system. A separate FERPA exception permits personally identifiable information to be disclosed without written parental consent to organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of validating or administering tests, administering student aid programs, or improving instruction.²⁹ Nothing in the law limits the purpose of this exception to improvement of overall programs, as opposed to improvement of instruction for individual students. If a local educational agency or school can provide education records to any organization to do a study to improve instruction for individual students, it certainly can provide personally identifiable information to a state data warehouse for this purpose. Accordingly, even if state law precluded a particular state longitudinal data system from being understood to be maintaining education records for each local educational agency or school -- or if a postsecondary institution elected not to have its records maintained by the state longitudinal data system -- local educational agency and school (including postsecondary school) education records would be disclosable to the longitudinal data system for the purpose of studying how to improve instruction for individual students. Thus, the state longitudinal data system could obtain the personally identifiable information from each local educational agency or school under both the "evaluation and audit" provision and the "study"

²⁹ 20 U.S.C. § 1232g(b)(1)(F).

provision, which collectively would permit use of the data for program evaluation, accountability, and improving instruction for groups of students or individual students.

- **May personally identifiable information obtained by the state longitudinal data system be re-disclosed to schools or other organizations?**
 - Student Data Not Derived from Education Records. Some of the personally identifiable data on students in a state data warehouse may originate with the state (such as performance data on state assessments). Ordinarily, those data would not be subject to FERPA at all because they are not derived from students' education records. However, as noted above, the No Child Left Behind Act provides that, for state assessments required by that Act, state assessment data become subject to FERPA once they are placed in a student's education record.³⁰ Although not clearly resolved, there is a solid legal interpretation that these data originating in the state that become subject to FERPA may be re-disclosed by the state consistent with any of the authorized disclosures in FERPA, since the state did not obtain these data from the student's education records as authorized FERPA disclosures that are subject to express prohibitions on re-disclosure.³¹
 - Student Data Derived from Education Records. The somewhat more difficult unresolved issue relates to the state longitudinal data system's authority to re-disclose personally identifiable information previously disclosed to the longitudinal data system from a student's education records. FERPA provides that personally identifiable information shall only be transferred to a third party on the condition that such party will not re-disclose the information to any other party without the written consent of the student's parents.³²
 - If the state longitudinal data system maintains education records for the local educational agency/school. To the extent that the state longitudinal data system can be understood to be maintaining education records on behalf of a local educational agency or school (and there is very strong legal support for this view, as discussed above), a disclosure to a third party by the longitudinal data system should be viewed as an initial disclosure outside of the local education agency or school (assuming it came within the authorized disclosures in FERPA), just as if it were made directly by the local educational agency or school, and the re-disclosure prohibition would be inapplicable.

³⁰ See footnote 15, *supra*.

³¹ As noted above, there is no issue regarding the authority of the state longitudinal data system to disclose state assessment, enrollment, and graduation data to local education agencies and schools attended by the students, since such disclosures are expressly authorized in the No Child Left Behind Act.

³² 20 U.S.C. § 1232g(b)(4)(B).

- Thus, for example, there should be no re-disclosure problem relating to the sharing of students' education records between the state longitudinal data system and schools attended by the students. FERPA authorizes a school to pass a student's education records on to subsequent schools or school systems in which the student enrolls or seeks to enroll.³³ (This exception clearly is not limited to the purpose of program audit or evaluation, or meeting federal requirements.) As noted above, based on this authority, it is appropriate for the state longitudinal data system both to receive and transfer personally identifiable information among the schools that it supervises on behalf of both the student's prior and new schools. Doing so is not a substantive extension of the noted FERPA disclosure provision. It merely accommodates a state warehouse as a mechanism acting for the schools and local educational agencies in maintaining education records and, accordingly, in making an authorized disclosure.
- The same theory supports transfers of personally identifiable information that is maintained by the state longitudinal data system as agent for local educational agencies and public schools in the state to postsecondary institutions and private schools in the state and to public and private schools at all levels in other states in which the student seeks to enroll or in fact enrolls. Here too, the longitudinal data system would be transmitting student education records to the student's subsequent school under an authorized FERPA disclosure on behalf of the local educational agency or school.
- Transfers of a student's education records to a school in which the student seeks to enroll or in fact enrolls is subject to the condition that the parents of the student be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record.³⁴ Under the analysis that the state longitudinal data system is maintaining education records for the local educational agency or school, the local educational agency or school remains accountable for overall FERPA compliance, including compliance with these requirements. However, states, local educational agencies, or schools may decide to centralize these functions in the state longitudinal data system for efficiency reasons as additional services to the local educational agency and school, incidental to its maintenance of their education records. To the extent these functions are centralized in the state longitudinal data system, it needs an

³³ 20 U.S.C. § 1232g(b)(1)(B).

³⁴ 20 U.S.C. § 1232g(b)(1)(B).

automated system to provide notices to parents when student records are forwarded to other schools or school systems. It also needs to establish a process to provide the records and provide an informal hearing to parents, if requested.

- If the state longitudinal data system does not maintain education records for the local educational agency/school. If state law precludes a state longitudinal data system from acting for local educational agencies and schools in maintaining their education records -- or if postsecondary institutions do not use the longitudinal data system to maintain their records – there is an interpretive issue regarding FERPA's prohibition on re-disclosure as it applies to personally identifiable information that the longitudinal data system previously obtained from local educational agencies or schools. Alternatively, the re-disclosure prohibition may be read to mean that, without written parental consent – (a) the personally identifiable information may not be re-disclosed by the longitudinal data system to anyone; (b) the personally identifiable information may be re-disclosed to other officials or agencies that also are authorized recipients of the personally identifiable information under the terms of the specific FERPA-authorized disclosure through which the longitudinal data system obtained the personally identifiable information; or (c) the personally identifiable information may be re-disclosed to authorized recipients of any FERPA-authorized disclosure.
 - This issue would be presented, for example, in a state where the state longitudinal data system is not maintaining the data on behalf of local educational agencies and schools; the system obtained personally identifiable information from a local educational agency or school for the purpose of evaluating or auditing a state or federal program; and the system received a request for this personally identifiable information from a school in which the student newly enrolled or from another organization for the purpose of conducting a study designed to improve instruction. FERPA might be interpreted to bar the longitudinal data system from re-disclosing this information without written parental consent, thus requiring the requesting school or organization to seek the information from the local educational agency or school from which the longitudinal data system had obtained the personally identifiable information (either on the theory that no re-disclosure at all is permitted or on the theory that re-disclosure is permitted only to other representatives of state educational authorities for the purposes of program audit or evaluation (authorized recipients under the initial disclosure to the longitudinal data system)). Alternatively, FERPA might be interpreted to permit the state longitudinal data system to make the re-disclosure because it would be consistent with other authorized disclosures provided for

in FERPA – to schools in which the student enrolls or seeks to enroll, or to an organization conducting a study for, or on behalf of, the local educational agency or school.

- There is a legal argument for making the latter interpretation of FERPA – i.e., not to bar re-disclosures by the state longitudinal data system if they come within any authorized disclosure in FERPA. The argument is that FERPA was not intended to bar re-disclosures that fully meet the requirements applicable to initial disclosures. Such re-disclosures arguably do not alter the substantive privacy protections in FERPA; they merely permit the state to implement authorized disclosures through a re-disclosure process. Thus, this is an alternative basis for supporting disclosures by the longitudinal data system to other schools or organizations in cases where the system is not maintaining the records for the local educational agency or school. However, this approach would likely require regulatory action by the U.S. Department of Education to be firmly established. Also, with regard to disclosures to conduct a study, there is an additional issue as to whether the state – assuming it were not maintaining and analyzing the records for the local educational agency or school – could authorize a study for a local educational agency or school for purposes of this FERPA disclosure. The argument favoring this authority would be that the state educational agency may authorize the study for or on behalf of the local educational agency or school for FERPA purposes pursuant to its general oversight authority.

- **May Personally Identifiable Information Be Disclosed to Organizations that Initiate Their Own Studies Related to Improvement of Instruction?**

- As noted above, subsection (b)(1)(F) of FERPA authorizes disclosures of personally identifiable information to organizations conducting studies for, or on behalf of, local educational agencies or schools for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, subject to protections against further disclosure of the personally identifiable information and to destruction of the data when no longer needed for the study.
- The U.S. Department of Education's Family Policy Compliance Office has by letter expressed the interpretation that to come within this authorized disclosure, it is not enough that a study undertaken by another organization may benefit the local educational agency or school. The study must be authorized by the local educational agency or school (or, we submit, by the state longitudinal data system on its behalf).³⁵

- However, states can resolve this issue by defining through state regulations or guidelines (or statute) what it means for the state longitudinal data system to authorize a study for purposes within the FERPA-authorized disclosure and establish a process to authorize such studies, even when the study may not have been initiated by the longitudinal data system, local educational agency, or school or may not be funded by them. In this way, states would be setting and applying more specific standards for implementing the Family Policy Compliance Office's general guidance in a reasonable manner.

- It is common research practice for an educational agency to support or sanction independent studies (for example, "field-initiated studies" that are not specifically solicited by the agency) that serve its purposes. Indeed, there may be strong educational policy reasons for an educational agency to support independently conceived and implemented research addressed to the educational programs and practices within the educational agency, as well as research that is specifically contracted for by the agency. Both types of studies are for, or on behalf of, the educational agency.

- States can issue regulations or guidelines that articulate these interests in independent studies, set standards for determining whether particular proposed studies initiated by other parties are of sufficient potential benefit to schools and local educational agencies to warrant authorizing them for FERPA purposes, and establish a process for the state longitudinal data system to apply these standards on behalf of local educational agencies and schools. The procedures should include, with regard to those studies that are authorized, required agreements by the state longitudinal data system with the research organization that include appropriate safeguards for protecting personally identifiable information (and destroying it when no longer needed for the study), consistent with FERPA. Although this is an issue for further study, the agreements might include penalties such as indemnification to the local educational agency or school for any loss of federal funds caused by a FERPA violation. (FERPA itself would debar an organization from receiving information from the education records of a local educational agency or school for at least five years if the organization improperly permits access to records in violation of FERPA).³⁶

- **May a school or local educational agency registering a new student have access to limited information in a state longitudinal data system for all students with the same name in order to ensure that it properly identifies and obtains the correct records for the new student?**

³⁵ See Letter of February 18, 2004, to Dr. Allan M. Lloyd-Jones, Special Education Office, California Department of Education, from LeRoy S. Rooker, Director, Family Policy Compliance Office, USED.

³⁶ 20 U.S.C. 1232g(b)(4)(B).

- Although FERPA permits disclosure of personally identifiable information to a school or local educational agency in which a student newly enrolls or intends to enroll, it does not expressly permit disclosures of personally identifiable information for other students who have the same name or for the indicated purpose.
- However, FERPA permits a local educational agency or school to designate "directory information" relating to a student and to make that information public, provided it has given public notice of the designation and given parents the opportunity to indicate that any or all of the designated information may not be disclosed without the parent's prior consent. The statutory definition of "directory information" includes, among other things, the student's name, address, and date and place of birth.
- A state may issue regulations applicable to all local educational agencies and schools in the state designating the student's date and place of birth and current and former addresses, and the parent's name, as directory information for the limited purpose of permitting a local educational agency or school registering a new student to check that information for all students with the same name in order to ensure it is correctly identifying the student and obtaining the correct education records for that student.
 - Although parents have the right to indicate that directory information not be disclosed without their prior consent, that is likely to happen rarely, if at all, for the subject limited disclosures.
 - Because these limited disclosures are designed to protect student privacy interests by avoiding disclosures of the wrong student records for students with the same name, it is arguable they should be permitted without having to use the directory information designations. However, apart from the directory information provisions, these disclosures do not come within any of the authorized disclosures in FERPA, so the safer legal approach is to use the directory information designations.

V. Postsecondary Institutions.

The legal analysis described above concerning the relationship of FERPA and state longitudinal data systems applies to the education records of postsecondary institutions as well as to those of local educational agencies and elementary and secondary schools. However, many colleges and universities may view maintenance of any of their education records by the longitudinal data system as compromising their independence and therefore as inconsistent with the institution's core operating principles. Accordingly, for such schools, that approach may not be viable from a practical and policy standpoint to resolve potential FERPA problems.

Nevertheless, FERPA does not prevent these postsecondary institutions from participating in a state longitudinal data system in order to match their student records with those of elementary and secondary schools for the purposes proffered by the Data Quality Campaign. Specifically—

- Postsecondary institutions may receive from the state longitudinal data system personally identifiable information on students in order to consider these students for admission and, once enrolled, make placement and related decisions. Providing such information to the postsecondary institution would constitute an authorized FERPA disclosure (to a school in which a student seeks to or in fact enrolls) by the longitudinal data system on behalf of local educational agencies or elementary or secondary schools for which the system was maintaining these records.
- Postsecondary institutions may disclose to the state longitudinal data system data on students who enroll in the institution for the purpose of assessing the performance of local educational agencies and elementary and secondary schools in preparing students for college. For example, information on student enrollment and performance in the college could be used to determine the percentage of each district's high school graduates who enroll in college after graduation; what percentage of graduates from a local educational agency or high school required remedial courses in college, and how this varied by socio-economic status or race; the extent to which remedial courses were required for students who scored proficient on state secondary school assessments; and the relationship of students' ability to stay in and complete college to their high school courses, grades, and test scores.
 - These data on students might be provided to the state longitudinal data system by a postsecondary institution in anonymous form, which would not implicate FERPA if the data were not easily traceable to individual students. Alternatively, personally identifiable information on students could be provided to the longitudinal data system under either or both of two authorized disclosures in FERPA:
 - As a disclosure to state education authorities for the purpose of evaluating state or federally supported education programs; or
 - As a disclosure to an organization to conduct a study for or on behalf of local educational agencies or schools for the purpose of improving instruction.
 - Under either provision, providing personally identifiable information on students would constitute a disclosure by the postsecondary institution for FERPA purposes. We believe that personally identifiable information provided by a postsecondary institution to the state longitudinal data system could also be shared by the system with the elementary or secondary schools that had been attended by the student, incident to these evaluation and study purposes. If the longitudinal data system desired in turn to provide these data to another organization, the issue discussed at pp. 18-21 concerning re-disclosure would apply. Assuming the purpose of the study is to improve elementary and

secondary instruction in local educational agencies or schools that had been attended by the student, there is no question that the longitudinal data system could provide the data to a contractor to conduct an evaluation or study for it. Also, assuming that purpose, and subject to the interpretation that FERPA's ban on re-disclosure does not prohibit re-disclosures that are consistent with authorized initial disclosures, as discussed at p. 21, above, it would be permissible to provide personally identifiable information obtained from a postsecondary institution to an independent organization to perform a study initiated by the organization, provided the state has standards and a process to determine which independently initiated studies are of benefit to local educational agencies or schools and may be deemed to be authorized by them. On the other hand, if the study in question is for the purpose of improving instruction at the postsecondary institution, and assuming the records are not maintained by the longitudinal data system for or on behalf of the postsecondary institution, the study likely would need to be authorized by the postsecondary institution, not by the longitudinal data system.

In sum, while continuing to maintain their own education records, postsecondary institutions may match their student records with those maintained by the state longitudinal data system for the specific purposes described above without violating FERPA.

VI. Next Steps

- **States.** Subject to the caution that the U.S. Department of Education is expected in the near future to issue revised FERPA regulations that address some of these issues, states that have a state longitudinal data system or are planning to establish such a system, should begin to consider the following steps, as appropriate, to ensure consistency with FERPA. They should do so in consultation with key officials and stakeholders, including the state attorney general.
 - Review/Issue state laws/regulations/guidelines.
 - Review state laws and regulations to ensure that they do not preclude the state longitudinal data system from acting for local educational agencies and elementary and secondary schools in maintaining and analyzing students' education records. (Conduct that review as well for any state postsecondary institutions for which a decision is made to have the longitudinal data system maintain certain records on their behalf.)
 - Develop and issue regulations or guidelines that clarify the role of the state longitudinal data system in acting for local educational agencies and schools in maintaining their students' education records and the range or types of education records covered.

- Develop and issue regulations or guidelines (or enact state laws) that establish standards for a school, local educational agency, or the state longitudinal data system on their behalf, to authorize a study initiated by another organization for the purpose of improving instruction and establish procedures for entering agreements with organizations to ensure the disclosure comes within the FERPA provisions and complies with FERPA safeguards, perhaps modeled on the licensing procedure used by the Institute of Education Sciences to share restricted data with research organizations, and perhaps including sanctions for any unauthorized re-disclosures.
 - Develop and issue regulations designating students' date and place of birth, parent's name, and current and former addresses as directory information for the limited purpose of providing this information to schools and local educational agencies for the registration of new students with the same name to ensure proper identification of the student and his/her records. Provide follow-up guidance and monitoring to ensure that local educational agencies and schools adhere to these regulations in their annual FERPA notices to parents.
 - Develop and issue regulations or guidelines allocating FERPA functions between the state longitudinal data system and local educational agencies or schools, or address these issues through agreements between the system and local educational agencies or schools.
 - Review state privacy laws to determine that the collection and disclosure of personally identifiable information by the state longitudinal data system complies with these laws as well as FERPA.
- Administration/Implementation.
- Ensure that education records maintained in the state longitudinal data system on behalf of a local educational agency or school are properly linked to that local educational agency or school, with firewalls that bar access to those records by any other agency, institution, or person, except pursuant to an authorized FERPA disclosure or as otherwise consistent with FERPA.³⁷
 - While the local educational agency or school remains accountable for overall compliance with FERPA, a state could decide to centralize certain FERPA functions incident to the maintenance of records by the state longitudinal data system. Each state needs to decide and clarify for parents which procedures will be implemented at the school or local educational agency level and which may be implemented centrally with

³⁷ See Letter of October 7, 2005, to Tazewell County (Va.) School Board from LeRoy Rooker, Director, Family Policy Compliance Office, USED.

regard to records maintained by the longitudinal data system on behalf of the local educational agency or school. Unless the state issues regulations or guidelines to allocate these responsibilities, appropriate state longitudinal data system agreements with local educational agencies and schools should do so. These procedures include, for example, compliance with required parental notices, making and maintaining records of disclosures, and related parental rights to contest the contents of records in connection with specific disclosures.

- Take steps to ensure that each local educational agency or school, in its annual FERPA notification to parents, notifies parents of the role of the state longitudinal data system in maintaining education records for the local educational agency or school and which categories or types of records are covered; the criteria for determining which employees involved in administering the longitudinal data system have legitimate interests in having access to personally identifiable information; and the procedures for asserting rights under FERPA with regard to these education records. The notice should also implement the recommendation above for designating limited directory information to facilitate proper identification of new students.
 - Develop agreements with those postsecondary institutions that continue to maintain their own education records to match certain of those records with records maintained by the state longitudinal data system for purposes of evaluating or studying the performance of local educational agencies and elementary and secondary schools in preparing students for college.
- The **U.S. Department of Education** should issue regulations or informal guidance consistent with the analysis in this paper.

VII. Conclusion

- Federal law sanctions and supports state longitudinal data systems, which are intended to facilitate more effective use of data for improving education and meeting the academic needs of students, consistent with core state and federal policy and law.
- Through state longitudinal data systems, states, educators, and researchers can have access to and use student data to meet these purposes – subject to applicable safeguards and procedures – without violating privacy protections for students and their parents that FERPA is designed to secure.