

April 20, 2012

## SHARED LEARNING INFRASTRUCTURE AND FERPA

- FERPA. Under the Family Educational Rights and Privacy Act (FERPA; 20 U.S.C. 1232g), educational agencies that receive funding from the U.S. Department of Education (USED) may not disclose personally identifiable information ("PII") from student education records without written parental (or eligible student) consent, unless the disclosure comes within a list of expressly authorized disclosures in the law.
- How SLI Fits with FERPA. FERPA expressly authorizes disclosures of PII from student education records to an educational agency's own officials, including teachers, with a legitimate educational interest in the data. By regulation, USED has applied this authorization to disclosures to contractors that perform outsourced services for the educational agency that in theory otherwise could have been performed by the agency's own employees. (This provision applies to school districts and schools that enroll students, not to state educational agencies.)
- The principal purpose of the Shared Learning Infrastructure (SLI) is to promote improved and personalized learning in school districts, consistent with Common Core State standards, by providing access to instructional programs aligned to the needs of individual students. Disclosures of PII from student records to the SLI to enable this purpose fall squarely within these FERPA provisions that authorize disclosures needed to provide outsourced services to participating school districts.
- School District Service Agreement. To come within these FERPA provisions, a service agreement is needed between the participating school district and the Shared Learning Collaborative (SLC) addressing the purposes of the agreement and of disclosures of PII to effect those purposes.
- The terms of that agreement will permit SLI to make disclosures of PII from student education records only back to the district from which the data originated (including data for that district provided by the state educational agency (which may also be provided back to the state educational agency)). The agreement will vest in the district authority to determine and administer the extent of access to the PII, both within the district, and to other recipients, including providers of program applications, consistent with the previously distributed Data Privacy and Security Plan. It will limit the purposes for which the data may be used and include provisions that provide for oversight of the use and maintenance of the PII by SLC and its sub-contractors. (The agreement will also address other issues such as intellectual property unrelated to data access and use.)

- Providers of Program Apps. Disclosures of PII from student education records may be made by the SLI to providers of program applications, but only—(1) if the school district has entered into an agreement with the provider purchasing or obtaining the program; (2) to the extent that the school district authorizes disclosures of the PII to the provider; and (3) for the purpose of providing services to students in the district.
- SLC sub-contracts. SLC has or will have sub-contracts with an organization to host the SLI, an organization to operate the SLI, and an organization to maintain the SLI. Neither SLI nor the SLI host generally will have access to the data, which will be encrypted when uploaded by the states and school districts. The organizations responsible for operating or maintaining the SLI will have access to the PII solely for these purposes. These arrangements also would come within the FERPA provisions for disclosures by an educational agency to obtain outsourced services.
- State educational agency disclosures. State educational agencies may disclose to the SLI, PII from student education records for a participating district. This would be an authorized re-disclosure under FERPA, based on the district's service contract with SLC, and for the purposes described in that contract.
- State educational agency agreements. A separate agreement between the state educational agency and the SLC will authorize use of the PII provided by the state educational agency or school district to the SLI for the purpose of evaluating public education programs in the state. Separate provisions in FERPA authorize disclosures of PII to state education officials and their authorized representatives for this purpose. The agreement will designate SLC (and its subcontractors) as the state educational agency's authorized representatives to assist the state in carrying out these evaluation functions and include other provisions required in FERPA. The agreement will also include other provisions that address the state's role in providing data to the SLI that will be used by SLI to provide services to participating school districts, as well as other matters, including the state's participation in the pilot.