

State Data Systems and Privacy Concerns: Strategies for Balancing Public Interests

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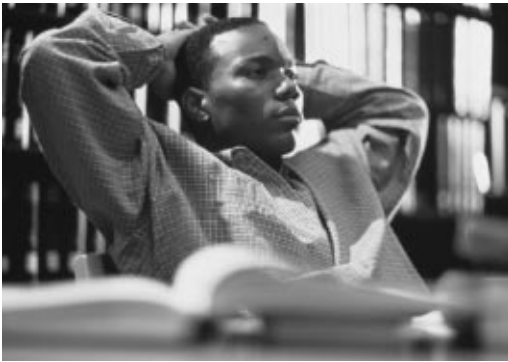


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State Data Systems and Privacy Concerns: Strategies for Balancing Public Interests

Introduction

As the accountability movement builds momentum in higher education, institutional, state, and national policymakers are looking for ways to improve student outcomes. Among these outcomes are retention, graduation, transfer from two-year to four-year institutions, employment, and earnings. Policymakers are also increasingly interested in the return on investment of public dollars spent on higher education. Concerns about efficiency, equity, and cost effectiveness are driving them to demand more, and more accurate, reporting of student outcomes from community and four-year colleges.

Here are some of the questions that policymakers raise:

- Are students succeeding in the state's public colleges and universities at an acceptable rate?
- Are states getting a reasonable return from their support of students who concentrate in certain disciplines?
- Are some ethnic or geographic populations doing better or worse than others in terms of educational attainment?
- Are public two-year colleges preparing students adequately for success in the upper division of a four-year institution—or are they falling short in some areas?
- Are workforce programs at the state's higher education institutions turning out graduates who stay in state and working in their chosen fields?

Better institutional systems for collecting and reporting student outcome data could help answer these questions. However, most of these questions require data from multiple institutions—including community and four-year colleges, K-12 systems, and the employment system.

Developing the public sector's capacity to collect and analyze more and better data about educational and employment outcomes makes great sense, but it confronts another very powerful public interest: individual privacy. The best way for states to know about and analyze student outcomes is to require institutions benefiting from public resources to report the educational progress and performance for each student. Such individual Student Unit Records (SURs) could be analyzed to answer specific questions about policy and practice. To do so, though, would require that significant amounts of information about individuals be collected, stored, and used by a public entity other than the one that initially collected the data. The danger of abuse of private information in the transfer, warehousing, and use of individual students' records is troubling to many.

This policy brief, prepared for *Achieving the Dream*, a national initiative to increase the success of underserved groups in community colleges, explores how states can balance the interests of accountability and privacy. It describes how states have addressed the collection and use of student record data within the limits and constraints set by federal privacy laws, with particular reference to the Family Educational Rights and Privacy Act (FERPA). It examines the approaches to

the collection and use of student unit records in the five states in the *Achieving the Dream* initiative—Florida, New Mexico, North Carolina, Texas, and Virginia—and it draws on their experience to highlight challenges that states face and options they can use to obtain performance data that can help community colleges improve student outcomes.

The brief also notes the experience and approaches of several other states that have successfully designed programs that use SUR data for the purposes of research and improvement. The analysis points to political, technical, cultural, and capacity issues that influence state options and approaches. And it can inform debates at the federal level about how best to promote accountability and improvement while protecting student privacy.

From the perspective of community colleges and state community college systems, which are the focus of *Achieving the Dream*, individually identified student data provided by SURs are important for several purposes. Information about students' K-12 curricula and experiences, for example, can help colleges signal to high schools where students need additional preparation. Information about post-college experiences in the labor market can help a state and its community colleges assess the value-added of technical and occupational programs being offered. Data on student demographics can enable states to assess whether programs and institutions effectively and equitably serve particular population groups—racial and ethnic groups, low-income students, first-generation college goers.

States collect some of this data. For instance, the National Center for Education Management Systems has found that among the 39 state SUR systems, all contain data on sex, race/ethnicity, and date of birth, as well as degrees awarded and program/majors, making it possible to calculate annual persistence and degree completion for a range of important demographic subpopulations (Ewell, Schild, and Paulsen 2003). However, data identifying the income status of students are far more limited and generally only include data from financial aid files.

A particular concern for many community colleges is to have better information about the educational progress of students who transfer to four-year institutions. Community colleges want this data for two reasons: first, to identify gaps in their educational offerings that make it difficult for transfers to succeed in four-year schools; and second, to be able to generate a more accurate accounting of their students' success by being able to track students who complete a postsecondary degree in another institution. Both needs become increasingly important as higher education accountability measures and performance funding become more common.

Yet many community colleges and state systems find it difficult to get access to or use student record information from multiple institutions and agencies. FERPA requires each “holder” of student data records to decide whether to grant or deny requests to use them. FERPA provisions regarding the release of student records—and the interpretation of the law by state and four-year college officials—are major factors in whether community college systems and individual institutions can get information they feel they need to serve students effectively.

Fortunately, a number of states—including several *Achieving the Dream* states—have responded successfully to the challenge of balancing the public interest in quality data on student outcomes with the equally essential interest in protecting individual privacy.

FERPA Provisions on the Use of Student Unit Records for Research, Accountability, and Improvement

The Family Educational Rights and Privacy Act was intended to prevent educational institutions from abusing student privacy.¹ It was passed in 1974 amid widespread concern about federal abuse of power and domestic surveillance. FERPA became law less than two weeks after President Richard Nixon resigned, in the aftermath of the Watergate scandal, the lingering Vietnam War, and a high level of attention to civil rights. Public access to private records was a volatile issue. A 1969 conference sponsored by the Russell Sage Foundation concluded that, “while FBI agents and

juvenile court and health department officials had access to the entire records—including sensitive psychological reports—in more than half the school systems surveyed and the local police in a third of them, parents were allowed access in less than 10 percent of the school systems” (as quoted in Shiley 2003).

FERPA provides students with certain rights concerning their education records. The most important of these are:

- The right to inspect and review education records;
- The right to seek to have records amended; and
- The right to some control over the disclosure of student record information.

FERPA applies to all educational institutions that receive federal funds, including K-12 and postsecondary institutions. The Secretary of Education can withhold federal funds from an institution that is not in compliance with the law, although this power has never been exercised.

FERPA requires that an educational institution receive written permission from a student or parent before releasing information from a student’s record. This requirement has a significant impact on state policies regarding use of student records. In **Washington State**, which has responded proactively, postsecondary institutions ask all students when they enroll for permission to release their demographic and educational data for research and accountability purposes.

FERPA provides several exemptions to this requirement. Student record data can be disclosed without permission under the following conditions (Pfeiffer 2003):

- Disclosure of “directory information,” defined as information contained in an education record that would not generally be considered harmful or an invasion of privacy if disclosed;
- Disclosure to authorized representatives of state or local educational authorities in connection with the audit and evaluation of federally supported education programs or in connection with the enforcement of federal requirements that relate to such programs;

- Disclosure for studies “to improve instruction,” so long as the study is conducted in a manner that does not permit identification of students or parents by individuals other than representatives of the research organization and the information is destroyed when no longer needed for the purposes for which the study was conducted.

Each of these exceptions provides opportunities for states that seek to collect and use student unit records and challenges that must be addressed carefully if state actions are to be allowable under FERPA.

- **Texas** uses the “directory information” provision to enable community colleges to obtain and report graduation data on their transfer students from four-year public and private institutions. Directory information includes, but is not limited to, a student’s name, address, telephone number, date and place of birth, photograph, dates of attendance, student status (full-time/part-time, undergraduate/graduate), grade level, major field of study, degrees or certificates awarded, participation in officially recognized activities and sports, and other types of data that may be specified in state law. By including “degrees and certificates awarded,” Texas can collect and report individual graduation rate data without prior consent from each student.
- **Virginia** uses the provision regarding disclosure in connection with the audit and evaluation of federally supported education programs to enable the linkage of community college students’ records with wage records. According to the U.S. Department of Education, an “authorized representative” of a state educational authority must be under the direct control of that authority (i.e., an employee or a contractor of the authority). As a result, states where a single body governs all public postsecondary institutions, such as **Nebraska** (see page 10), can link student unit records from both community colleges and four-year institutions with records from other sources. To do so, the authority (or its representative) must maintain direct control over the data-matching process and ensure that personally identifiable information, such as a Social Security Number, is not disclosed to the labor department or other agency that maintains records for the match.



- The exemption for studies that are designed to improve instruction is the most appropriate option for states and systems that wish to improve program performance and student outcomes. The stipulation that data collected for program improvement studies must be destroyed when they are no longer needed can limit the utility of this provision. However, **Florida** has successfully argued that longitudinal research following students over time requires keeping records for many years, so that further education and employment outcomes can be tracked and the impact of different programmatic experiences can be assessed.

The different provisions under which protected data are disclosed and used have different compliance requirements. In general, institutions that collect student record data must: make students aware that they may opt out of allowing the use of directory information; notify them of the purposes for which protected data will be disclosed; identify criteria for determining who constitutes a school official and what constitutes a

legitimate educational interest; and assure that the data will never be re-disclosed in a way that identifies an individual.

Compliance with FERPA while developing an SUR system entails significant compliance costs. Successful negotiation with varied agencies holding records that can usefully be linked with student unit records requires great technical and political skill. Given the cost and complexity, are individual record data systems necessary? Could other strategies generate enough information?

The general consensus from research by the National Center for Higher Education Management Systems and from Jobs for the Future is that state-level, individually identifiable, student data systems are needed if states and institutions are to have enough information and flexibility in its use to assess performance and encourage institutional improvement. (Whether such a system should be introduced at the federal level is far more contentious: see page 14.) In states where colleges or systems do not have access to individual records, the process for requesting repeated data analyses from a third party is costly and unwieldy. The National Student Clearinghouse has clear strengths as a source of data to states and colleges looking to improve performance, but policymakers interviewed by NCHEMS expressed several concerns: the cost of using the clearinghouse, its bias toward institutional clients rather than state research needs, and the limited data elements included in clearinghouse records, particularly the lack of data on program of study, credit-completion or course progression, and full versus part-time status (NCHEMS n.d.).

Achieving the Dream States: Policies on Collection and Use of Student Records in Light of FERPA

States vary greatly in their interpretations of how to stay within the bounds of FERPA requirements regarding student record privacy. For example, **New Mexico** and **North Carolina** lean toward privacy rights: community college representatives can not obtain the SURs of students who transfer from their institutions. But **Virginia** community college representatives may obtain

transferees' records from four-year institutions. Additional variation results from a lack of clarity among state and institutional officials about what FERPA allows and prohibits in the area of warehousing and using student data for accountability and research.

States have legitimate concerns about FERPA. The law creates significant barriers to the use of protected data. States and institutions must develop policies and systems for using SURs and linking them to other records, and compliance costs are not insignificant. At the same time, "hiding behind" FERPA can be convenient for institutions that do not want to disclose certain information. Refusing to share student records may protect what institutions see as proprietary information in the context of competition for students. It also may protect institutional autonomy. And it may keep down the costs associated with government-requested reporting.

In this context, **Florida** and **Texas** are leaders in protecting the privacy of student data while responding to the public's interest in accurately assessing the performance of postsecondary and other systems and programs that receive public funding. Both states can determine how many students transfer and graduate from higher education, provide details about the course-taking patterns of transfer students, offer clues to the barriers that students face, and support a strong state-level accountability mechanism for measuring institutional progress on student transfer. In addition, Florida and Texas have notably effective record linkage policies across the many agencies that govern K-12, employment security, adult education, and other public services (Callan and Finney 2003).

As the following summaries from the five *Achieving the Dream* states illustrate, state SUR systems range from strong to weak and from inclusive to narrow. These summaries highlight differences and variations among states, and they set the stage for recommendations for states wishing to expand access to individually identifiable records for the purpose of program improvement and accountability within the rules set by federal privacy laws.

These brief descriptions focus on four dimensions of the state systems:

- What data are available to community colleges and their systems about present and former students?
- How is the data system organized and governed?
- Which agencies' records are linked in the system?
- Are students in private postsecondary institutions included in the system?

Florida: A Culture of Data Sharing

Florida has developed perhaps the most comprehensive capacity to analyze data and provide reports regarding educational accountability and improvement. Through legislative authority—but perhaps more importantly through the careful nurturing of interagency relationships—Florida has developed a culture in which institutions are comfortable with providing data to a state agency that, in turn, provides valued reports and services to cooperating institutions.

Florida has almost two decades of experience collecting and using student record data for purposes of program improvement and accountability, beginning with vocational education and workforce programs. Over the years, both the legislature's focus on data-driven appropriations and decision-making and a collaborative approach at all levels to define the look and feel of the state's educational data systems influenced their development and reputation. The collegial approach laid the groundwork for their further development. In 1988, state legislation established the Florida Education and Training Placement Information Program as the primary resource for documenting compliance with the vocational education performance requirements of the state. Since then, FETPIP has expanded its coverage and services to all educational levels and programs, as well as to vocational education, and it has moved into cooperative programs with private and independent institutions. FETPIP has also expanded the kinds of reports it produces. Today, Florida has a well-established system of collecting and sharing student-level data among all education sectors—K-12, career and technical education, community colleges, and universities—for the purposes of accountability, research, evaluation, and funding. The system tracks educational and employment and earn-

ings outcomes over time for students from participating institutions and programs.

The system was strengthened when Florida legislated a series of changes regarding governance of the state's education system. The Florida Board of Education now governs a K-20 system. A new Office of K-20 Education, Information, and Accountability houses a K-20 data warehouse that integrates all available information about current and recent students in a relational database. Information on past students is maintained in FETPIP.

The Florida Residents Assistance Grant also supports the state's system of collecting student data. The state legislature relies on reports from FETPIP for appropriation decisions regarding this grant program. Grants go to students at independent colleges as well as public colleges, and the independent colleges provide student unit records to FETPIP partly because of the funding they receive.

Reports on students who have transferred include data from public two- and four-year institutions, information from in-state independent vocational and trade schools, information from in-state independent colleges, and information from out-of state colleges. Florida has contracted with the National Student Clearinghouse for information on out-of-state students. The clearinghouse has enrollment records on a high percentage of college students, as well as a significant number of records on credentials they obtain.

Florida's community colleges can also access SUR information for purposes that comply with FERPA, for students who attend their institution, did so previously, and others.

Using Social Security Numbers, FETPIP links student unit records with follow-up data held by state and federal agencies on all students leaving Florida public institutions. Among other types of information, FETPIP gathers information on employment, continuing postsecondary education, and military service. FETPIP uses linked records to conduct longitudinal analyses that track further education and job placement. The results of these follow-up studies are provided to state and local counselors, teachers, education/training poli-

cymakers, and elected officials for planning, evaluation, and career guidance purposes. Data are a part of education and workforce development accountability programs at all levels.

Florida Resources

Several documents provide additional detail on Florida's approach to the use of individually identifiable data on students:

- Interagency Agreement Between Department of Education and Agency for Workforce Innovation
- Extension of Matching Program between the United States Post Office and the Florida Department of Education
- Description of the Florida Education and Training Placement Information Program
- Florida Education and Training Placement Information Program Annual Collection Cycle
- Jay Pfeiffer, Student Follow-up Using State and Federal Administrative Records: Lessons from Florida's Education and Training Placement Information Program

These documents are available on the Jobs for the Future Web site at www.jff.org/jff/kc/library/0247.

Texas: Broadly Defined Directory Information

Texas has evolved a sophisticated and stable system of collecting student record data from varied in-state educational institutions. The data are used to generate reports on student outcomes over time, yielding reports on student outcomes that are useful to two- and four-year postsecondary institutions that want to measure success and improve their performance. This system provides community colleges with a certain amount of information about transfer students and how they fare.

The Texas Higher Education Coordinating Board is the highest authority in the state regarding matters of public higher education. THECB holds that it needs SURs for students in all postsecondary institutions in order to make policy and inform other policymaking bodies. One reason, the board argues, has to do with how state funds flow to higher education institutions: Texas routes institutional funding that is allocated on a per-student basis through THECB, so it requires individually identifiable record data for all students in order to make and oversee these allocations.

Because this institutional funding goes to both public and independent institutions, Texas can collect student records from independent as well as public institutions, which is unusual. Jan Greenberg, general counsel for THECB, notes that independent institutions are comfortable with this arrangement for two reasons. First, provisions of the record-sharing agreement minimize their liability for disclosure of data protected by privacy laws. Second, they receive specific benefits from the analysis of their data, such as reports on labor market outcomes for their students.

THECB, working with the Texas Education Agency and the Texas Board of Education Certification, provides data to the Texas Public Education Information Resources, which houses and manages student data collected by these three agencies. The data warehouse, which has a combination of aggregated and raw data, is designed to provide ready access to public primary, secondary, and higher education information for the purposes of research, planning, policy, and decision-making.

Texas policymakers believe that FERPA restricts the re-disclosure of student unit records protected by the law. As a result, individual educational institutions cannot access the student unit data sets for their own use. Community colleges cannot directly receive FERPA-protected SUR data on transfer students. Instead, the board's Commissioner established a definition of "directory information" that includes name, field of study, enrollment status (e.g., full-time, part-time, undergraduate, graduate), degrees, certificates, and other awards received, type of award received (academic, technical, tech-prep, or continuing education), dates of attendance, student classification, and name of the most recent previous institution attended. Community colleges get data on their transfer students' degrees and certificates earned through this expanded definition of what is included as directory information.

Several years ago, Texas changed its policy on linking SURs with Unemployment Insurance wage records. Previously, the Texas Workforce Commission had been responsible for matching the records. THECB grew concerned that FERPA did not allow it to delegate responsibility for the privacy of student records to a workforce



agency. In response, it revised established policy, requiring THECB staff to manage the record linkage process. This has the added benefit of making it possible for the board to include in its aggregate reports the data from records of students who specifically do not allow public disclosure of their directory information.

Texas Resources

Several documents provide additional detail on Texas's approach to the use of individually identifiable data on students:

- Information Exchange Agreement Between Post-secondary Institutions and the Texas Higher Education Coordinating Board
- Texas Workforce Commission Non-Financial Agreement

These documents are available on the Jobs for the Future Web site at www.jff.org/jff/kc/library/0247.

Virginia: Data System Includes Independent Institutions

Like Texas, Virginia uses FERPA's provisions regarding directory information to provide, without having prior permission from individual students, community colleges with information on students who have transferred to other institutions. Community college researchers identify students who may have transferred and send that information to the State Commission on Higher Education of Virginia. SCHEV returns reports that include the institutions attended by transferees, the programs in which they are enrolled, and the credentials they have achieved. The researchers can use the information they receive in combination with the SUR data they have to calculate retention and graduation rates for in-state transfers.



SCHEV provides directory information from both public and independent colleges. SCHEV oversees state tuition grant funding, and the law authorizing that oversight requires participating institutions to provide student data. Virginia's independent colleges do not raise FERPA concerns regarding provision of student records to SCHEV, in part because of SCHEV's role in funding and in part because SCHEV provides services they value, such as Integrated Postsecondary Education Data System (IPEDS) submissions. Moreover, Virginia has a culture of sharing data across agencies, which enables the state to go further in developing a data warehouse and reporting system than other states might attempt.

Like many states, Virginia limits the use of Social Security Numbers in tracking student records. According to Tod Massa, policy research and data warehousing director at SCHEV, Virginia prohibits records from containing Social Security Numbers unless a law specifically requires them. This affects K-12 records, not

records from postsecondary institutions: SSNs are required for reports to the federal Internal Revenue Service regarding financial aid. The prohibition against K-12 records including SSNs complicates record linkage, but Massa does not think the barrier will be significant. Every K-12 student will have an identification number issued by the state. When they enter postsecondary education, they will also provide their unique SSN. Massa sees little problem linking postsecondary and K-12 records by using both numbers.

State policy regarding linkage of student unit records with Unemployment Insurance wage records has changed recently, expanding SCHEV's ability to track the employment and earnings of college students. Historically, linkages of these records had been done through a partnership between the Virginia Community College System and the state's Employment Commission. The state appropriations act now provides for SCHEV to work with those agencies on record linkage, enabling SCHEV to link UI wage records to student databases under its authority.

North Carolina: Extensive Data, Divided Governance

North Carolina allows community colleges to obtain unit record data for their own students, as well as to aggregate data system-wide on other community college students. However, the University of North Carolina has stymied the efforts of community colleges to obtain student unit records of transfer students.

The leadership of the state's flagship university is not opposed to providing student unit records to the community college system, but university attorneys interpret FERPA to prohibit the release of UNC student records to other institutions in the state. They do allow UNC to report on transfer students' follow-on educational experience, providing data such as the percentage with GPAs at or above 2.0. However, as Keith Brown, associate vice president of the North Carolina Community College System explains, the university's interpretation of FERPA, prohibiting access to individual records, effectively prevents community colleges from analyzing the impact of particular programs on students with differing demographic characteristics and prior educational experience.

Limits on the access of community colleges to four-year colleges' SURs occur, in part, because North Carolina divides governance for two-year public institutions, four-year public institutions, and the K-12 education among three separate systems. Discussions are underway about establishing a K-20 data warehouse that will include key data elements from all three educational systems.

The Community College System Office collects extensive unit record data on community college students. These records include information on credit, non-credit, and basic skills/adult literacy students. Demographic data include race, ethnicity, and gender. Other fields include high school attended, programs being attempted, and, for credit students, financial aid, courses, course performance, completion status, student credit hours, program/major, and receipt of degree.

North Carolina is a leader in the analysis and use of labor market outcome data of postsecondary students. In 1991, the state Attorney General approved the North Carolina Community College System's work with the state Department of Labor to match student data records with Unemployment Insurance wage records. NCCCS has been doing so ever since.

New Mexico: Valuing Privacy Rights

New Mexico state policy values privacy highly, and the political culture tends to resist efforts to build centralized government capacity and authority. Not surprisingly, then, New Mexico lags other *Achieving the Dream* states in the access that community colleges have to information about their students' further education. In New Mexico, the Council on Higher Education does not allow individual community colleges access to the student unit records of transfer students. Instead, the council analyzes data that is stored in the statewide Data Editing and Reporting (DEAR) system and reports the results to community colleges. The council's aggregated reports include information on public two- and four-year college students, as well as very limited information on students attending independent institutions. The council is considering a contract with the National Student Clearinghouse to

increase its information on independent and out-of-state colleges.

Privacy concerns affect the sharing of educational records in New Mexico. Public four-year institutions are reticent to provide information to individual community colleges about the educational performance of their students that transfer to four-year schools in-state. As in Virginia, New Mexico does not allow K-12 student records to include Social Security Numbers.

On the other hand, several years ago, responsibility for Adult Basic Education records was transferred from the K-12 system to the council. Recent efforts to link records in the ABE database with postsecondary SURs have been somewhat successful: some of the ABE records included Social Security Numbers, and among them approximately 70 percent could be linked with the DEAR system's postsecondary records.

In general, New Mexico has not developed a culture of data sharing. As a result, according to Paul Lundrum of the state's Council on Higher Education, educational institutions tend to believe that the council's right to collect information is limited; the presumption is for privacy over information.

This has bearing on the ability of New Mexico community colleges and the state to generate data that can help identify strategies for improving outcomes for underrepresented groups in higher education, including low-income and first-generation students. Frank Renz of the New Mexico Association of Community Colleges would like the state to be able to disaggregate student outcome data by income level to assess how best to reduce inequities in outcomes and services. However, some postsecondary institutions have received legal opinions arguing that FERPA restricts collection of income data, opinions that seem to trump the Council on Higher Education's position that the law does not restrict collection of income data. The Governors Task Force on Higher Education recently proposed a number of incentives to colleges to improve outcomes for low-income students: if these are implemented, there might be more support for collecting and reporting outcomes by income groupings.

How Other States Manage Data Within FERPA Constraints

The experience of other states can be a helpful guide to states or state college systems that are trying to expand their access to unit records of students who have been enrolled in their institutions. Three are summarized here, each for a different aspect of its data collection and analysis system.

- **Oklahoma**, like Florida and Texas, have a proven track record for policies that have not run afoul of FERPA regulations and have been broadly accepted by other stakeholders and systems in-state (Callan and Finney 2003).
- **Nebraska's** policy on linking student unit records with wage records recently received approval from the U.S. Department of Education's Family Policy Compliance Office as effectively protecting privacy under FERPA.
- **Washington State** has a sophisticated and extensive data tracking system that includes records from K-12, adult education, community colleges, four-year public institutions, and the Employment Security Commission, built upon data linkage agreements with a variety of agencies on whose behalf the community college system conducts data analysis. Washington addresses FERPA disclosure rules directly by securing releases from students when they enroll in the state's community colleges.

Oklahoma: Proven Track Record

Oklahoma's SUR system benefits from the state's governance structure, under which the Oklahoma State Regents for Higher Education coordinates all postsecondary institutions, including community colleges. This makes the collection and warehousing of postsecondary students records easier under FERPA. The Oklahoma Education Information System, a unit record database containing public and private higher education institutional data, is managed by the State Regents for state and federal reporting, policy analysis, and decision-making. The Regents promotes access to and dissemination of information from the OEIS that

improves the education-related decisions of parents, teachers, administrators, policymakers, and educational stakeholders as well as the general public—while protecting individual data in ways that the U.S. Department of Education accepts as meeting FERPA requirements.

The state has established five levels of access to student unit records, each of which is consistent with a specific educational purpose as defined in Section 99.2 of the FERPA regulations. One of these access levels is for researchers, education groups, and other parties who express legitimate educational interests. To further the understanding of educational practices, methods, or theory, they are allowed to read all database records and fields that would be expected through acceptable research practice.

Oklahoma Resources

The following document provides additional detail on Oklahoma's approach to the use of individually identifiable data on students:

- Oklahoma State Regents for Higher Education Data Access and Management Policy

This document is available on the Jobs for the Future Web site at www.jff.org/jff/kc/library/0247.

Nebraska: Linking Student and Wage Records

Nebraska is noteworthy for the U.S. Department of Education's recent approval of its method for linking Unemployment Insurance wage records with postsecondary student records in compliance with FERPA. In 2004, the Family Policy Compliance Office approved the state's record matching policy because it meets the standard that representatives of educational agencies must maintain direct control of student records provided by their institutions.

Nebraska's Coordinating Commission for Postsecondary Education has oversight over all postsecondary educational institutions, including community colleges. CPPE has an ongoing contract with the Nebraska Department of Labor to match graduates' Social Security Numbers against Unemployment Insurance wage records, so postsecondary and wage

records can be linked. One CPPE employee has been designated to perform this function and educated about FERPA limitations. The contract with the Labor Department provides authority to this individual to enter the UI wage database and perform the computer matches at the CPPE office. For the purpose of preparing Workforce Investment Act reports, aggregate data showing raw numbers of students who match in various program and industry code categories, with Social Security Numbers and names deleted, goes electronically to the Department of Labor, which uses the data to prepare a report for each participating institution.

This system meets FERPA requirements because Department of Labor employees do not participate directly in the wage record match, in the sense that they do not see students' Social Security Numbers. Rather, Labor Department employees make the UI data for a specific time frame available to a CCPE employee who enters the UI database to conduct the match.



When a community college student registers for classes, the registration form includes a statement that if students provide Social Security Numbers, those numbers will be used for data matching purposes. Over 90 percent of students provide Social Security Numbers. DLOA contains one record for each student for every three-month period, with information on firms for which the student worked and colleges attended, for a six-year time frame. Uniquely, DLOA contains the number of hours a student has worked in a quarter (Seppanen 1998).

SBCTC maintains two kinds of data sharing agreements. One establishes roles and responsibilities for linking student unit records with wage records. The second identifies DLOA as the agent of other state agencies for the purpose of analyzing data. Through the assistance of the Workforce Training and Education Coordinating Board, DLOA creates partnerships with managers of other programs to defray the costs of record linkage.

Nebraska Resources

The following document provides additional detail on Nebraska's approach to the use of individually identifiable data on students:

- Family Policy Compliance Office letter to Nebraska re meeting reporting requirements of WIA, 3/04

This document is available on the Jobs for the Future Web site at www.jff.org/jff/kc/library/0247.

Washington State: Extensive Analysis of Community College Data

Washington State is a leader in the collection and analysis of student record data from multiple agencies—across higher education, adult education, and the workforce system.

The Washington State Board for Community and Technical Colleges (SBCTC), which coordinates Washington's 35 community and technical colleges, has a well-developed data collection and reporting system: Data Linking for Outcomes Assessment. DLOA links community college students' unit records with records from four-year colleges and other administrative records, including records from the Employment Security Department.

Washington State Resources

Several documents provide additional detail on Washington's approach to the use of individually identifiable data on students:

- State Board of Community and Technical Colleges Interagency Data Sharing Agreement
- Employment Security Department Interagency Data Sharing Agreement

These documents are available on the Jobs for the Future Web site at www.jff.org/jff/kc/library/0247.

How States Can Strengthen their Student Data Systems

Perhaps the best way to address FERPA concerns is to secure written permission from all students regarding the release of records, as the Washington community colleges do for every student who enrolls in their institutions. Once permission is secured, records from any institution that the student attends can be released without a problem. There are reasons, though, that states don't follow Washington's lead, such as a culture that favors privacy, fear that the percent of students who grant permission will decline, and traditions of localism that might make it difficult to secure agreement to participate from all the colleges in the state.

To reduce privacy concerns and in response to growing interest in limiting identity theft, some states are restricting the use of students' Social Security Numbers, relying on alternate identifiers in individual student data records. For instance, Florida assigns an alternative identifier to every K-12 student. When students enroll in a postsecondary institution, they must provide a Social Security Number. The Office of K-20 Accountability keeps a high-security file that matches the numbers. It only uses Social Security Numbers for situations where alternatives do not exist, such as linking student records with wage records and filing reports with the Internal Revenue Service.

Barring the securing of written permission from students, there are ways for states to build effective data systems that meet FERPA requirements. It is obviously much easier to collect, warehouse, and use data from institutions from different education levels when a single administrative agency has governing authority over, at a minimum, all public postsecondary education. In Texas, where a single entity governs all of higher education, it is easier to integrate the data systems from community colleges and four-year institutions and to generate rich longitudinal reports on transfer students and other populations. In Florida, the Office of K-20 Education, Information, and Accountability, in which FETPIP is housed, is well positioned to collect and store data from multiple agencies that constitute the K-20 system. It helps that state statute designates FETPIP as the primary means for Florida's Department of

Education to collect follow-up data by linking various administrative records and that Florida's data collection efforts are backed up by a longstanding legal framework. In New Mexico and North Carolina, where state-level authority is either weak or divided, it is more difficult to build an effective student record system that doesn't run afoul of FERPA rules or interpretation.

Officials who have built and run SUR warehouses and reporting agencies in states like Florida and Virginia understand the technical and legal barriers—like fragmented governance and authority—that might limit a state's ability to develop systems that easily aggregate and provide access to student data across higher education or across K-20 and the workforce system. However, Jay Pfeiffer, director of Florida's Office of K-20 Education Information and Accountability, and Tod Massa of Virginia believe that states have options for responding effectively to privacy concerns and reticence to share information that otherwise stymie efforts to generate more useful outcome and performance reports. Ohio, for example, which has no legal framework on state data systems comparable to that in Florida, has made great strides in recent years in the development of an extensive system linking individually identifiable record data across multiple education and employment agencies. This progress has been made primarily because of diligent relationship building and persuasion by the head of the state's Board of Regents.

Pfeiffer and Massa encourage state officials to ask themselves: what would make public and private educational institutions see it as worth their time, effort, and cost to report and provide access to detailed student record data on all their students? What benefits can be provided to institutions that justify their participation in data sharing?

One answer is: provide services in exchange for data. In Florida, a range of institutions sees FETPIP services as valuable, particularly through longitudinal reports that are regularly and widely disseminated. Resistance is natural and is best countered with value rather than mandates, notes Pfeiffer. He recommends working with "lead institutions" that are eager to collaborate and let the more resistant institutions see over time that the

reports could be of value. He also recommends disseminating reports strategically to legislative committees, all agencies that contribute data, and other stakeholders whose support is critical to long-term political viability and system funding.

Massa sees the provision of services as a way to encourage voluntary participation of independent institutions. In Virginia, the State Council for Higher Education prepares the Integrated Postsecondary Education Data System reports for independent colleges to provide to the federal government, a service they value in exchange for access to student records for research purposes. This may be sufficient incentive. According to Massa, state officials also have to assess opportunities and obstacles that result from competition among independent colleges in the state and between independent and public institutions, as well as the extent to which the state has a culture of interagency collaboration and the cost of establishing and maintaining a system with the needed capacity.

Another important incentive for expanding participation from the range of in-state postsecondary institutions is to provide funding and expect reporting in return. Texas routes Institutional funding from the state through the Coordinating Board. This sets up the possibility of a *quid pro quo*: colleges provide student unit records to the board so that it can exercise its accountability responsibility as a disbursing of public funds to individual institutions. Because state funding is also disbursed to independent colleges through the board, these colleges must also participate in the data system and provide student unit records for their students. A similar dynamic is at work in Virginia.

Beyond sound marketing and incentive strategies, a state must still build effective day-to-day working relationships across key agencies that collect data. It must establish and reestablish clarity, through well-specified interagency agreements, on the roles and responsibilities of the various institutions and agencies regarding the data records agencies provide to the common data warehouse and the products that are generated from the data. The formal agreements that FETPIP negotiates to define responsibilities, while not legally required, are crucial to Florida's ability to promote

data sharing and to establish and maintain solid relations with relevant agencies and institutions. The agreements identify FETPIP as the agent of the educational institution or agency that holds data subject to privacy restrictions and spell out obligations of parties to the agreement. Pfeiffer recommends from experience that agreements be re-negotiated annually to underscore and cement mutual accountability (and that states involve lawyers early to flag potential problems).

A Growing Challenge: Tracking Students Out of State

Tracking students for purposes of accountability and program improvement has become increasingly complex as college-going patterns shift. According to national studies, over half of all students who receive a baccalaureate degree attend two or more institutions. More problematic for state data systems, four out of ten of these students attended institutions in multiple states. For states to have a complete picture of their students' educational outcomes (e.g., persistence, transfer, and completion rates), it will be necessary to link unit record databases across states, not just across agencies within states.

With funding from the Lumina Foundation, the National Center for Higher Education Management Systems has taken a look at student unit record systems across the states, with particular focus on strategies for linking these systems effectively and cost-effectively (NCHEMS 2003). Based on research reported in *Following the Mobile Student*—and interviews with state officials across the country—NCHEMS has concluded that a centralized and comprehensive approach to coordination across states may not be advisable. Rather, it advocates for exploring multiple decentralized agreements among two or a few states that are regional in nature (e.g., Florida and Georgia; New England and New York) where cross-state movement is most common. NCHEMS' reasons for this proposal mirror the views of one side in the debate at the federal level about a national SUR system: concerns about privacy, flexibility, cost, and level of bureaucratization. NCHEMS suggests state explore either an interstate compact or third-party contracting model.

*For more information on this important and growing challenge to quality data collection and analysis, contact NCHEMS (www.nchems.org) and see its report, *Following the Mobile Student*.*

Federal Policy Issues

The federal government has played an important role in shaping the kind of information that postsecondary educational institutions collect and report—and the analyses that can be conducted of institutional and system strengths, weaknesses, and performance. FERPA and other federal privacy laws provide the context within which states are building information systems, just as the Perkins Act and the Higher Education Act drive reporting at the federal level. As Congress considers how to encourage greater accountability in higher education, the issue of data collection, use, and reporting is likely to emerge in debates around Higher Education Reauthorization and other legislation.

Some advocates for better data systems, including Tod Massa of the State Commission on Higher Education of Virginia, have suggested that the Higher Education Act include a clarification that uses of data for analysis of retention, graduation rates, and other accountability purposes are not controversial, are at least permitted, and may be required. Others, though, warn of opening up consideration of privacy issues in Congress, given the current heated and polarized political climate on issues of individual privacy rights.

The U.S. Department of Education has jumped with both feet into the debate on the federal role in shaping state and institutional collection and use of student records. The National Center for Education Statistics has proposed replacing the current Integrated Postsecondary Education Data System, which is based on aggregated reporting from institutions to the department, with a national SUR system. Institutions would report individual record data to NCES, with Social Security Numbers, whether or not students receive financial aid. According to NCES, the proposed system, now being studied for feasibility, would require changes in FERPA, as well as some additional federal funding.



Early reactions to the NCES proposal have been intense and divided. The American Council on Education, the American Association of State Colleges and Universities, and the State Higher Education Executive Officers support the proposal. They note that it would greatly improve our national understanding of how well colleges educate their students, including those from underrepresented groups, and would more accurately depict the benefits resulting from public investments in postsecondary education. The Department of Education's Family Policy Compliance Office has expressed comfort with the NCES proposal and the changes to FERPA it would require.

Other organizations—particularly those representing private and independent colleges—have expressed deep reservations. The American Association of Collegiate Registrars and Admission Officers has indicated it might oppose changes to FERPA on privacy grounds. The National Association of Independent Colleges and Universities has asked whether a national SUR system could serve as a disincentive to college attendance by classes of students such as the children of illegal aliens. The United States Student Association has raised the potential for abuse by government representatives or individuals who have access to NCES data, including concern about its use for deportation.

Many state officials are vigorously opposed to the federal government moving toward a national student unit record system. Perhaps the clearest statement comes from Jay Pfeiffer in Florida. He offers several cautions:

- Privacy and security are legitimate concerns and should be central to the debate—on their merits and also because of the potential for public backlash against government intrusion and overreach. Policymakers should take care that privacy concerns do not raise public doubt about data collection and use, and they must be prepared to adjust data system collection methods to avoid such concerns.
- Unit record databases designed for research purposes should not be used to sanction an individual student or provide information that could lead to denial of federal benefits to the individual or their college. The NCES proposal opens the risk of such use.
- State legislatures, not the federal government, provide most of the funding for postsecondary education. Their data systems should be strengthened and not bypassed, using No Child Left Behind as a model for designing and establishing federal and state roles in promoting accountability.

Other concerns focus on the risk of proliferation of federal, state, and institutional iterations of unit record data that are slightly different, the resulting reporting burden on institutions, and the difficulty of having multiple answers to accountability questions due to differences in reporting.

Instead of replacing aggregated IPEDS reporting with the transfer of individually identifiable student records to the federal government, Pfeiffer and others recommend improving the accuracy and coverage of the IPEDS system through a process of consulting with state, regional, and national organizations and agencies that have experience with student data collection, analysis, and reporting systems. Given NCHEMS' conclusion from its research against a centralized, comprehensive SUR system, it makes sense to explore and design alternatives. It is particularly important that these alternatives generate sufficiently detailed information about student success—that data can be disaggregated to report on outcomes for population groups traditionally underrepresented in higher education, as No Child Left Behind does for K-12 education.

Conclusion

While the privacy concerns that led to the passage of FERPA in 1974 remain strong, state and federal interest in making postsecondary education more accountable has grown significantly. Balancing these interests has become the subject of intense debate in states and at the federal level—and these debates are likely to accelerate. Some states, though, have been more successful than others in striking a balance that protects individual privacy while also making it possible for community colleges and other higher education institutions to use individually identifiable data records to drive institutional improvement. Some states have been better able than others to create data warehousing and analysis capacity and to use student demographic information to identify inequities in educational outcomes for students from different population groups. The lessons from these states and their approaches can be helpful to other states as they try to craft and implement policies that fit with their particular culture, politics, and policy environment.

In the coming years, state efforts to collect and use student record data effectively for research and improvement purposes will have to address important challenges. These include: how to collect more complete and better information on student income so that variations in student outcomes by income can be better understood; how best to link K-12, higher education, and workforce data in states where these linkages are weak or non-existent; and how to capture the educational outcomes of students who change institutions or attend multiple institutions in- and out-of-state. States will also, in all likelihood, have to adjust to revisions in federal rules and laws on privacy issues in educational data collection and access. In this context, states may need to increase investment in data systems, their maintenance, and their use for improvement of student outcomes. And they will have to hope that federal policy makes it easier, not harder, for states to use individual student record data for purposes of research, accountability, and improvement, particularly for students who traditionally have more difficulty succeeding in community colleges and higher education generally.

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Shiley, Courtney S. 2003. *Putting the Rights into the Family Education Rights and Privacy Act: Enforcement and the Private Right of Action*. Bachelor's Thesis. Cambridge, MA: MIT.

Other Resources

Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g (Legislative history). www.ed.gov/policy/gen/guid/fpco/ferpa/leg-history.html

FERPA regulations Title 34 C.F.R. Part 99. These establish restrictions and penalties for the improper release of information contained within a student record. www.ed.gov/legislation/FedRegister/2000-3/070600a.html

US DOE guidance on application of FERPA to the Perkins Act and the Adult and Family Literacy Act. www.ed.gov/policy/gen/guid/secletter/030130.html

Developing and Maintaining the Information Infrastructure for State Level Policymaking. www.nchems.org/Information%20Infrastructure.doc

Sources of Background Information

We thank the organizations listed below, which provided information that played an important part in the research Jobs for the Future conducted for *State Data Systems and Privacy Concerns*. We are grateful to the representatives of those organizations whom we interviewed.

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National Association of Independent Colleges and Universities

National Center for Higher Education Management Systems; Peter Ewell, Vice President

New Mexico Council on Higher Education; Paul Lundrum, Data Processing Manager

New Mexico Association of Community Colleges; Frank Renz, Executive Director

North Carolina Community College System; Keith Brown, Associate Vice President for Planning and Research, Dolores Parker, Vice President for Academic and Student Services

Nebraska Coordination Commission for Postsecondary Education

Oklahoma State Regents for Higher Education

State Council of Higher Education for Virginia; Tod Massa, Policy Research and Data Warehousing Director

Texas Higher Education Coordinating Board; Jan Greenberg, General Counsel, Kenneth Dalley, Director of the Educational Data Center

Virginia Community College Office of Academic Services & Research

Washington State Board for Community & Technical Colleges; Carmen Grose, Data Services Manager

Endnote

1 This brief focuses on FERPA, which is the most important federal law concerning privacy and student records. It should be noted that other federal laws and regulations contain provisions that govern the use of protected data. Jay Pfeiffer (2003) points out that other laws contain exemptions that work in concert with FERPA. For instance, the Privacy Act of 1974 provides that individually identifiable data may be disclosed for routine uses that are aligned with the purposes for which the data were collected, and they may be disclosed to an agency or organization that has provided the agency holding the data with advance assurance that the records will be used for statistical purposes and in a form that is not individually identifiable. Some federal laws may conflict with FERPA, such as the requirements in the Perkins and Workforce Investment acts that educational and wage record data must be used in accountability reporting.