



Written by [Raven Clabough](#) on May 23, 2011

DOE's Proposed Regulations Raise Student Privacy Concerns

The Department of Education released a proposal last month that dramatically alters the 1974 Family Educational Rights and Privacy Act (FERPA), which guarantees the privacy of student records. Critics of the proposal contend that it infringes upon student privacy and allows the government access to what should be private information.



The Department of Education [touts](#) FERPA as a law that “protects the privacy of student education records.” The current law assigns complete control over students’ educational records to the parents until students reach age 18, when the rights are then transferred to the students.

Likewise, schools require written consent from the parent or student to release student record information. However, the new proposal “would give states the flexibility to share data to ensure that taxpayer funds are invested wisely in effective programs.”

The Blaze writes, “Critics are most worried that the impending changes would expose private information to even more parties, while chipping away at parental and student rights.”

Education Secretary Arne Duncan (pictured, above) attempted to justify this potential danger to student privacy by asserting, “Data should only be shared with the right people for the right reasons. We need common-sense rules that strengthen privacy protections and allow for meaningful uses of data. The initiatives announced today will help us do just that.”

While the Education Department purports that student privacy remains a top priority, critics view the new regulations as more focused on easing the process of data collection than protecting student privacy and maintaining students’ control of their own educational records. Likewise, opponents to the proposal highlight it as yet another “federal power grab,” as coined by *The Blaze*, that will ultimately remove privacy protections.

In fact, the National Association of Independent Colleges and Universities (NAICU) issued a statement on the new regulations, calling them an “intent to facilitate statewide longitudinal data systems capable of tracking individuals from pre-kindergarten through employment.” It adds that the new policy “represent[s] a substantial and unwarranted erosion of student privacy.”

Similarly, American Principles in Action (APIA) has indicated adamant opposition to the plan. Emmet McGroarty, director of Preserve Innocence, a project of the APIA, contends that the proposals are just another step in the federal government’s effort to “co-opt education.” He explains:

Race to the top is the next step after No Child Left Behind. Race to the Top was intended to foist



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national curriculum on the states and a national means of evaluating. This data system is in the larger stimulus package. Every state that took [stimulus] money needs to have databases and then connect them to the states and the federal government in an effort to track students from kindergarten throughout their careers.

Despite contentions that the proposals endanger student privacy, others emphasize the supposed benefits of the system, as it allows schools greater access to student records.

Kathy Gosa, informational technology director for the Kansas Education Department, states, "This version of FERPA allows us to share back information with teachers about individual students." She believes that permitting schools greater access to student records would allow them to make determinations about what programs work and which programs require reform.

Gosa's defense of the proposal raises further concerns, however, such as who may have access to the records. NAICU complains, "The changes are intended to remove barriers to linking education records with records maintained for pre-school, health and human services, labor, and the like." McGroarty bemoans this element of the proposal:

These proposed rule changes expand the universe of entities that can receive the data, which is one of the really dangerous things here. Under the current proposals, the attorney general and controller general can look at [the data] for auditing purposes. The secretary of education can look at it in terms of evaluating their programs. This would also include the Department of Labor and the Department of Human Services.

Meanwhile the new law is rather unclear as to who would be provided greater access to the data:

Under the proposed definition, an authorized representative would mean any entity or individual designated by a State or local educational authority or agency headed by an official listed in § 99.31(a)(3) to conduct — with respect to Federal or State supported education programs — any audit, evaluation, or compliance or enforcement activity in connection with Federal legal requirements that relate to those programs.

The vague description has provoked the [ire](#) of APIA, which claims that it ultimately allows anyone access to student data.

For now, the Department of Education has [posted](#) the changes for public view and comment. Today is the deadline for people to comment on the changes.

McGroarty contends that changes of this degree should be presented to Congress, and not effected through mere regulations.



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