

Quarterly Portfolio Call for School Turnaround AmeriCorps: Challenges and Strategies for Collecting Student Level Data

July 23rd, 2015

Presenter: Michael Hawes, Office of the Chief Privacy Officer, expert on FERPA

Call Summary of Presentation and Discussion

- PTAC: Privacy Technical Assistance Center, available for advice on data sharing under FERPA. PTAC is available to all education stakeholders, including CNCS grantees (<http://ptac.ed.gov/>).
- Schools are often reluctant to share data, even when it is permissible under FERPA. This reluctance can be combatted by building trust with the district, particularly through showing them examples of good, worthwhile data sharing. This can help districts that are wary of sharing based on limited knowledge or understanding of privacy laws like FERPA.
- Exceptions to FERPA: there are a few exceptions to the written consent requirements outlined in FERPA. Two of the most relevant to ASN grantees are:
 - School official exception: to the extent that AmeriCorps members are going in to schools and performing activities that a school staff member or volunteer would otherwise perform but is not performing, this could qualify as a “school official” use of student data. There is documentation needed on the part of the school here to justify this (e.g. annual justification to parents).
 - This also covers volunteers, parents coming into the classroom to volunteer, etc.
 - Audit and evaluation exception: allows for data sharing from state or local education authorities (including districts). Student data can be shared in its identifiable forms for the purpose of evaluating a federally or state sponsored education program. You can use the data to evaluate effectiveness.
 - See the following PDF for more detailed information:
http://ptac.ed.gov/sites/default/files/FERPA%20Exceptions_HANDOUT_horizontal_0.pdf

Q&A:

- Q: Who should a program work with to obtain data?
 - A: School districts may have an office of evaluation or research. It can help to work with them to establish a relationship and put together a letter of support or understanding to ease the process of accessing data. Have a formal data sharing agreement in place with districts.
 - Keep in mind that data sharing agreements need to get at the *uses* of the data, and identify the right FERPA exception for each use. This can help overcome objections to use of data. The more specific you can be about how you will get the data, and how you will use it, the higher your chances are of getting the data sharing agreement approved.
- Q: When partnering to share data, for the purposes of accelerating or scaling up interventions, what are some obstacles and strategies you might run into?

- A: The best way to get data from students you are working with is to get parental consent. When you have parental consent, FERPA concerns vanish. You are then only bound by the conditions in the consent form. You could try having parental consent be a stipulation to receive your services (be very specific on that form); that can help overcome the need for the right documentation and exceptions down the road. If you can't do that, you have to get at which FERPA exception your use of the data would fall under. The school official exception usually applies when you're providing education-related services; see if it fits under that and that it's properly documented by the district.
- City Year's data sharing agreement words the school official exemption in a way that makes it clear that members are engaged in activities that fit the school official exemption while not engaging in duties that duplicate or displace school staff or volunteers.
- Q: For the School Turnaround national evaluation, what exception would apply?
 - A: Since you are getting the data two ways, first from the district to the grantee, and then from the grantee to CNCS/the evaluation contractor, you would need one data sharing agreement that mentions both the school official and audit or evaluation exceptions. Alternatively, you could have two separate data sharing agreements, one for each exception.
- Q: Does FERPA apply to aggregated data?
 - A: FERPA only protects student personally identifiable information (PII) from students' educational records. When you are sharing non-PII, you can share it for whatever purpose you want. But, just because data is aggregated does not mean it's no longer PII. The way PII is defined under FERPA includes anything that is linked or linkable to a student, and includes anything that could allow someone to identify them with reasonable certainty. If you have small cells, extreme values, or your data is dis-aggregated by unusual characteristics, you likely have PII despite not identifying student names, etc.
- Q: If we are collecting data that relates to student health, or data that might be subject to HIPPA privacy regulations, are we primarily constrained by HIPPA or FERPA laws?
 - A: Generally speaking, any health records maintained by the school, and contained within an individual's education records are treated as education records, and therefore are protected under FERPA and not under HIPPA's Privacy Rule.

Closing thoughts:

- A common issue programs face is that a district may simply not want to share data, so they use FERPA as an excuse rather than just saying they don't want to. Educate yourself and be prepared with the right knowledge of FERPA regulations.
- Relationship building with the district can take you very far. Just because the school or the district has a FERPA exception available to them does *not* mean that they have to use it. You need to show them the value that they will get from sharing this information with your program.
- <http://ptac.ed.gov/> is available to all education stakeholders, and staff are available to answer specific questions from all programs.