AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

EXPLORING OPPORTUNITIES TO STRENGTHEN EDUCATION RESEARCH WHILE PROTECTING STUDENT PRIVACY

HEARING

BEFORE THE

SUBCOMMITTEE ON EARLY CHILDHOOD, ELEMENTARY, AND SECONDARY EDUCATION

COMMITTEE ON EDUCATION AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

HEARING HELD IN WASHINGTON, DC, JUNE 28, 2017

Serial No. 115–21

Printed for the use of the Committee on Education and the Workforce

Available via the World Wide Web:
www.gpo.gov/fdsys/browse/committee.action?chamber=house&committee=education
or
Committee address: *http://edworkforce.house.gov*

U.S. GOVERNMENT PUBLISHING OFFICE

25–995 PDF WASHINGTON : 2018

For sale by the Superintendent of Documents, U.S. Government Publishing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON EDUCATION AND THE WORKFORCE

VIRGINIA FOXX, North Carolina, *Chairwoman*

Joe Wilson, South Carolina
Duncan Hunter, California
David P. Roe, Tennessee
Glenn "GT" Thompson, Pennsylvania
Tim Walberg, Michigan
Brett Guthrie, Kentucky
Todd Rokita, Indiana
Lou Barletta, Pennsylvania
Luke Messer, Indiana
Bradley Byrne, Alabama
David Brat, Virginia
Glenn Grothman, Wisconsin
Steve Russell, Oklahoma
Elise Stefanik, New York
Rick W. Allen, Georgia
Jason Lewis, Minnesota
Francis Rooney, Florida
Paul Mitchell, Michigan
Tom Garrett, Jr., Virginia
Lloyd K. Smucker, Pennsylvania
A. Drew Ferguson, IV, Georgia
Ron Estes, Kansas
Karen Handel, Georgia

Robert C. "Bobby" Scott, Virginia
Ranking Member
Susan A. Davis, California
Raúl M. Grijalva, Arizona
Joe Courtney, Connecticut
Marcia L. Fudge, Ohio
Jared Polis, Colorado
Gregorio Kilili Camacho Sablan, Northern Mariana Islands
Frederica S. Wilson, Florida
Suzanne Bonamici, Oregon
Mark Takano, California
Alma S. Adams, North Carolina
Mark DeSaulnier, California
Donald Norcross, New Jersey
Lisa Blunt Rochester, Delaware
Raja Krishnamoorthi, Illinois
Carol Shea-Porter, New Hampshire
Adriano Espaillat, New York

Brandon Renz, *Staff Director*
Denise Forte, *Minority Staff Director*

SUBCOMMITTEE ON EARLY CHILDHOOD, ELEMENTARY, AND SECONDARY EDUCATION

TODD ROKITA, Indiana, *Chairman*

Duncan Hunter, California
David P. Roe, Tennessee
Glenn "GT" Thompson, Pennsylvania
Luke Messer, Indiana
David Brat, Virginia
Tom Garrett, Jr., Virginia
Karen Handel, Georgia

Jared Polis, Colorado
Ranking Member
Raúl M. Grijalva, Arizona
Marcia L. Fudge, Ohio
Suzanne Bonamici, Oregon
Susan A. Davis, California
Frederica S. Wilson, Florida

C O N T E N T S

	Page
Hearing held on June 28, 2017	1
Statement of Members:	
Polis, Hon. Jared, Ranking Member, Subcommittee on Early Childhood, Elementary, and Secondary Education	4
Prepared statement of	4
Rokita, Hon. Todd, Chairman, Subcommittee on Early Childhood, Elementary, and Secondary Education	1
Prepared statement of	3
Statement of Witnesses:	
Schwartz, Dr. Nathaniel, Chief, Research and Strategy Officer, Tennessee Department of Education	14
Prepared statement of	16
Stickland, Ms. Rachael, Co-Founder and Co-Chair, Parent Coalition for Student Privacy	6
Prepared statement of	9
Whitehurst, Dr. Grover J. "Russ", Senior Fellow in Economic Studies, Center on Children and Families, the Brookings Institution	30
Prepared statement of	32
Whitmore Schanzenbach, Dr. Diane, Director, The Hamilton Project, The Brookings Institution	22
Prepared statement of	24
Additional Submissions:	
Mr. Polis:	
Letter dated May 8, 2014, from the U.S. Department of Justice	47
Submission for the record	51
Information on the Rights of All Children to Enroll in School: Questions and Answers for States, School Districts and Parents	53
Chairman Rokita:	
Letter dated June 27, 2017, from the Electronic Privacy Information Center	60
Ms. Stickland:	
Prepared statement of	64
Questions submitted for the record by:	
Roe, Hon. David P., a Representative in Congress from the State of Tennessee	67, 69, 71
Responses to questions submitted for the record to:	
Dr. Schanzenbach	73
Dr. Schwartz	74
Dr. Whitehurst	81

EXPLORING OPPORTUNITIES TO STRENGTHEN EDUCATION RESEARCH WHILE PROTECTING STUDENT PRIVACY

Wednesday, June 28, 2017
House of Representatives,
Subcommittee on Early Childhood,
Elementary, and Secondary Education,
Committee on Education and the Workforce,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:04 a.m., in Room 2175, Rayburn House Office Building, Hon. Todd Rokita [chairman of the subcommittee] presiding.

Present: Representatives Rokita, Thompson, Messer, Polis, and Bonamici.

Also Present: Representatives Foxx, Handel, and Scott.

Staff Present: Courtney Butcher, Director of Member Services and Coalitions; Amy Raaf Jones, Director of Education and Human Resources Policy; Nancy Locke, Chief Clerk; Jake Middlebrooks, Legislative Assistant; James Mullen, Director of Information Technology; Krisann Pearce, General Counsel; Lauren Reddington, Deputy Press Secretary; Mandy Schaumburg, Education Deputy Director and Senior Counsel; Brad Thomas, Senior Education Policy Advisor; Michael Woeste, Press Secretary; Tylease Alli, Minority Clerk/Intern and Fellow Coordinator; Austin Barbera, Minority Press Assistant; Jacque Chevalier, Minority Director of Education Policy; Mishawn Freeman, Minority Staff Assistant; Alexander Payne, Minority Education Policy Advisor; and Veronique Pluviose, Minority General Counsel.

Chairman ROKITA. Good morning, everyone. I first want to take a moment to take care of one housekeeping item. Yesterday, Representative Karen Handel of the Sixth District of Georgia was appointed to the Committee on Education and Workforce. And while her subcommittee assignments are not yet final, I do want to welcome the Congresswoman to the committee.

I've known Karen personally for years because we served as secretaries of State together. Her masterful leadership creating commonsense election reforms in Georgia led to models for the rest of the Nation to follow. She has showed tremendous leadership for the people of the entire State of Georgia, and I look forward to seeing that leadership here on the committee.

So, Karen, welcome.

Mrs. HANDEL. Thank you very much.

Chairman ROKITA. There is no denying the fact that we live in a data-driven society. Information sharing is connecting and changing almost every industry. And, of course, our education system is no different.

In 2002, the Education Sciences Reform Act, ESRA, was enacted to update and improve how we could leverage education research to better serve our Nation's schools. And while ESRA was necessary to reform education research to better inform what is working in schools, the law may not be working as well as Congress wanted or intended. In fact, a 2013 Government Accountability Office study found weaknesses in the law, specifically significant delays in the distribution of research available to educators.

States and local school districts rely on timely education research to identify best practices from across the country in order to build a better learning environment. And we need to ensure this research is delivering results for our schools in need. The data collected by schools is essential for understanding what is working, and it allows for a more open conversation between schools and parents about strategies that work for our students.

Now, while technology has allowed information to be at our fingertips and has made our lives certainly more connected, if not easier, such a change comes with significant privacy concerns that we in this committee need to address.

Americans are apprehensive——and with good reason——that personal information, such as personal finances and medical records are susceptible to hacking. We hear it in the news almost on a daily basis. And our students' educational information covers not only all of those areas, but even more, and it is vital that we do all that we can to keep this information safe.

So when we think of educational information, we may only think of grades, test scores, course lists, but there is so much more that is associated with a student's personal record. Individual education records may contain sensitive information, such as Social Security numbers, physical and mental health records, family issues, and student loan and other personal finance data. As a father of two young boys, I understand firsthand the importance of keeping our children's records safe and secure.

So when Congress passed the Family Educational Rights and Privacy Act, FERPA, as we call it, way back in 1974 to protect student privacy, the internet, of course, didn't even exist. As we continue to see technology play a key role in how we conduct educational research, it is time for Congress to have a serious discussion on whether or not FERPA is keeping all student information safe, and how we can update it for——and, if so, how——or, if not, how we can update it for a 21st century world.

Our hearing today will focus on how we can strike the right balance between leveraging education research for our students, while ensuring their information is private and secure. We have gathered a diverse group of witnesses, some of whom I've met already, who will give us their own perspectives on the effectiveness of both the ESRA and FERPA, and we look forward to hearing their stories.

Education research can be a powerful tool to help our students, but that information should not come at the cost of a student's pri-

vate and personal information. And I think we can thread that needle here in the 21st century. I look forward to our discussions of these issues today.

And now I yield to Ranking Member Jared Polis for his opening statement.

[The statement of Chairman Rokita follows:]

Prepared Statement of Hon. Todd Rokita, Chairman, Subcommittee on Early Childhood, Elementary, and Secondary Education

Good morning, and welcome to today's subcommittee hearing. I'd like to thank our panel of witnesses and my colleagues for joining today's important discussion on education research and student privacy.

I also want to welcome Congresswoman Karen Handel to the subcommittee. I've known Karen personally for years because we served as Secretaries of State together. Her masterful leadership creating common sense election reforms in Georgia led to models for the rest of the nation to follow. She showed tremendous leadership for the entire state of Georgia and I look forward to seeing it here on the committee.

There is no denying the fact we live in a data-driven society. Information sharing is connecting and changing almost every industry, and our education system is no exception.

In 2002, the Education Sciences Reform Act (ESRA) was enacted to update and improve how we could leverage education research to better serve our nation's schools.

While ESRA was necessary to reform education research to better inform what is working in schools, the law may not be working as well as Congress wanted or intended.

In fact, a 2013 Government Accountability Office (GAO) study found weaknesses in the law, specifically significant delays in the distribution of research available to educators.

States and local school districts rely on timely education research to identify best practices from across the country in order to build a better learning environment, and we need to ensure this research is delivering the results our schools need.

The data collected by schools is essential for understanding what is working, and it allows for a more open conversation between schools and parents about strategies that work for our students.

While technology has allowed information to be at our fingertips, and has made our lives more connected, such a change comes with significant privacy concerns.

Americans are apprehensive, with good reason, that personal information such as personal finances and medical records are susceptible to hacking. Our students' educational information covers all of these areas and more, and it is vital that we do all that we can to keep this information safe.

When we think of educational information, we may only think of grades, test scores, and course lists, but there is so much more that is associated with a student's personal record.

Individual education records may contain sensitive information such as social security numbers, physical and mental health records, family issues, and student loan and other personal finance information.

As a father of two young boys, I understand first hand the importance of keeping our children's records safe and secure.

When Congress passed the Family Educational Rights and Privacy Act (FERPA) in 1974 to protect student privacy, the Internet didn't exist.

As we continue to see technology play a key role in how we conduct educational research, it is time for Congress to have a serious discussion on whether or not FERPA is keeping all student information safe.

Our hearing today will focus on how we can strike the right balance between leveraging education research for our students, while ensuring their information is private and secure.

We have gathered a diverse group of witnesses who will give us their own perspectives on the effectiveness of both ESRA and FERPA, and we look forward to hearing their stories.

Education research can be a powerful tool to help our students, but that information should not come at the cost of a student's private and personal information. I look forward to our discussion of these issues today.

Mr. POLIS. Thank you, Chairman Rokita, for holding this hearing on this very important topic this morning. I want to thank all four of our witnesses for joining us.

Education research and student data privacy are both very important, both to us as members of this committee as well as to our constituents. Fortunately, both education research and data privacy are thoroughly bipartisan issues, and members of this committee have a history of working together on bipartisan legislation and oversight to protect privacy and to utilize data to improve educational opportunities for children across our country.

For example, the Success in Education Through Research Act would have updated current education research law. The Student Privacy Protection Act would have updated current law addressing educational rights and privacies for the internet era.

Additionally, I, along with my colleague, Congressman Messer, introduced the Student Digital Privacy and Parental Rights Act last Congress, which would create new privacy protections for students by prohibiting ed-tech vendors from selling student data or using it for commercial gain. The bill also helps reinforce a bipartisan belief that ed-tech providers have a responsibility in guaranteeing that student data is private and secure and that reasonable precautions are taken, just as it would be for yours or my credit card or personal financial information.

It's important to acknowledge the support and the role that education research plays in helping achieve equity of opportunity amongst all students, and the promise of continued progress towards individualized education using educational technology. The importance of data is even more crucial as States begin to implement the Every Student Succeeds Act, passed by this Congress, which ensures that schools and districts are held accountable for the education they provide to their students and for all kinds of students, even though States have broader flexibilities under the law and how they can meet those requirements.

ESSA contains an important privacy safeguard by requiring States to set a minimum sample size for reporting disaggregated group-level data so that individual data cannot be inferred from the group data, commonly referred to as the n-size. The statute requires States to ensure the minimum number does not reveal any personally identifiable information.

One of the challenges I look forward to addressing here in this hearing is the need to strike a balance between student data privacy laws with very strong protections, while still allowing students, teachers, districts, and families to benefit from research findings, from State data systems, from optimized and personalized educational technologies, and the promise of ed-tech innovation.

I want to thank our witnesses for participating in this hearing. I'm very much looking forward to your testimony.

And I yield back.

[The statement of Mr. Polis follows:]

Prepared Statement of Hon. Jared Polis, Ranking Member, Subcommittee on Early Childhood, Elementary, and Secondary Education

Education research and student data privacy are topics important to my constituents and me. Both are also bipartisan issues, and members of this committee have a history of working together to introduce bipartisan legislation to reauthorize edu-

cation data and privacy laws. For example, the Success in Education Through Research Act (SETRA) would have updated current education research law. And the Student Privacy Protection Act would have updated current law addressing educational rights and privacy.

Additionally, I, along with my colleague Congressman Messer, introduced the Student Digital Privacy and Parental Rights Act last Congress, which would create new privacy protections for students by prohibiting ed tech vendors from selling student data or using it for commercial gain. The bill also helps reinforce a bipartisan belief that ed tech providers have a responsibility in guaranteeing student data is private and secure. I look forward to continuing to work with Congressman Messer on this issue and re-introducing our student data privacy bill this year.

While education rights and privacy are essential, and we want to make sure federal law does not hinder any state efforts that attempt to raise the bar in protecting student privacy, it is also important to acknowledge and support the role education research plays in helping achieve equity of opportunity amongst all students.

Reliable de-identified data plays a constructive role in identifying gaps in public education, and longitudinal data systems help state and local leaders identify strategies for intervention and improvement of poorly performing schools.

The importance of data is even more crucial as states begin to implement the Every Student Succeeds Act (ESSA), which still ensures schools and districts are held accountable for the education they provide to their students even though states have broader flexibilities and responsibilities under the law. ESSA also contains an important privacy safeguard by requiring states to set a minimum sample size for reporting disaggregated group-level data. Commonly referred to as the "n-size;" the statute requires states to ensure that the minimum number does not reveal any personally identifiable information.

One of the challenges I look forward to addressing in this hearing is the need to strike a balance between student data privacy laws with strong protections, while still allowing students, teachers, districts, and families to benefit from research findings, state data systems, and the promise of ed tech innovations, like personalized learning platforms.

Thank you again to the witnesses for participating in this hearing, and I look forward to your testimony.

Chairman ROKITA. I thank the gentleman.

Pursuant to committee rule 7(c), all members will be permitted to submit written statements to be included in the permanent hearing record. And, without objection, the hearing record will remain open for 14 days to allow such statements and other extraneous material referenced during the hearing to be submitted for the official hearing record.

I'd now like to turn to the introduction of our distinguished witnesses, and I recognize, again, the ranking member to introduce the first witness.

Mr. POLIS. We have a Coloradan on our panel today. I'm excited to welcome back Rachael Stickland, who is a parent from Jefferson County, Colorado, which I represent a part of. She is the founder of Privacy Matters and the co-chair of the Parent Coalition for Student Privacy. Along with her coalition co-founder, they've organized a national coalition of parents and advocates to support student privacy and advocate for State and Federal legislation with strong student data privacy protections. I'm thrilled to welcome Jefferson County resident Rachael Stickland.

Chairman ROKITA. I thank the gentleman. Welcome.

I'll resume with our introductions.

Dr. Nathaniel Schwartz is the chief research and strategy officer for the Tennessee Department of Education.

Welcome, sir.

Dr. Diane Schanzenbach——

Ms. SCHANZENBACH. I'm used to it.

Chairman ROKITA. I'll look into your digital record, ma'am——is the director of The Hamilton Project and a senior fellow at the Brookings Institution.

Dr.——

Ms. SCHANZENBACH. Schanzenbach.

Chairman ROKITA.——Schanzenbach, welcome. Thank you.

Dr. Russ Whitehurst is a senior fellow in the Center on Children and Families in the Economic Studies program at the Brookings Institution.

Dr. Whitehurst, welcome as well.

I now ask our witnesses to raise your right hand.

[Witnesses sworn.]

Chairman ROKITA. Let the record reflect that all witnesses answered in the affirmative.

Thank you.

Before I recognize you to provide your testimony, let me briefly explain our lighting system. And this is a reminder for us up here as much as it is for you. You'll each have 5 minutes to present your testimony. And when you begin, the light in front of you will, of course, be green. With 1 minute left, it will be yellow. And with a red light, I'll start hitting on the gavel. So at that point, I'll ask you to wrap up your remarks as best you're able. And, remember, all this will come into the record, including any written testimony you've given us. And then members, under that same lighting system, will each have 5 minutes to ask questions.

So, with that, Ms. Stickland, you're recognized for 5 minutes.

TESTIMONY OF RACHAEL STICKLAND, CO-FOUNDER AND CO-CHAIR, PARENT COALITION FOR STUDENT PRIVACY

Ms. STICKLAND. Thank you, Chairman Rokita, Ranking Member Polis, and distinguished members of the subcommittee, for inviting me to testify today on behalf of parents concerned about student privacy. My name is Rachael Stickland. I am a parent of two public school children in Colorado and a co-founder and co-chair of the Parent Coalition for Student Privacy.

Today, I'd like to focus my testimony on the need to consider the broad implications to privacy when student data are collected and disclosed for various purposes, including research.

The first topic I would like to address is data security. In the last 18 months alone, K through 12 public schools in the U.S. experienced at least 147 separate cybersecurity-related incidents, some resulting in identity theft. Last year, 13 percent of all higher education institutions experienced a ransomware attack. This is the first time that the education sector outpaced the government, retail, and healthcare industries in this type of threat.

But these incidences aren't——excuse me——incidents aren't limited to K-12 schools and colleges. The U.S. Department of Education has been found to have especially weak security standards as reported in a 2015 audit by the Department's Inspector General. According to the audit, staff in the Inspector's Office hacked into the Department's main IT system, gained unfettered access to personal data without anyone noticing.

In May 2016, the government scorecard created to assess how well Federal agencies were implementing data security measures awarded the Education Department an overall grade of D.

Earlier this year, the IRS disabled the FAFSA data retrieval tool on the Education Department's website until extra security protections could be added. The IRS later reported that the personal data of as many as 100,000 taxpayers may have been compromised through this tool. My family, in fact, fell victim to this attack. In a series of letters sent by the IRS, we learned someone likely obtained my husband's tax data through the FAFSA application and then filed a joint return on our behalf. The IRS has since provided 1 year of identity theft protection for my husband, but nothing for me or our children.

So whether at the State, local, or Federal level, student information is vulnerable to breaches and hacks such as these in large part because the Federal student privacy law known as FERPA has no baseline security requirements. Until the law is updated to address data security in the 21st century, students will continue to be at risk long into their adulthood.

Another issue we urge you to consider is the use and disclosure of student data stored in statewide longitudinal data systems, or SLDSs, or any Federal data repository. While parents generally support research to drive decision-making in education, most believe that education should be in the control of their local community and that a student's data should remain within the school or district.

When State or Federal agencies gain access to identifiable student data without parental consent, many parents perceive this action as government overreach. Other parents are concerned that data collected on individuals, even when limited to certain elements and collected for one purpose, could be expanded in scope and subjected to mission creep. K through 12 student data currently maintained by most States in their SLDS contain upwards of 700 highly sensitive data elements, including disciplinary records, disabilities, and immigration status. The comprehensive nature of these data sets creates lifelong dossiers on individuals and could quickly become a go-to repository for other State agencies, institutions, or the Federal Government.

Frankly, it's not difficult to imagine how this gold mine of data could be repurposed for political or ideological gain, which is one reason our coalition supports maintaining the Higher Education Act's ban on a Federal student unit-record system.

FERPA became law at a time when students' files were held in the principal's office, for the most part, never left the school. Many parents believe this is still the case and are shocked to learn that troves of electronic student data are collected by schools and their contractors, stored online, and digitally disclosed to private companies and to State and Federal agencies without their consent.

We believe the disconnect stems, in part, from FERPA's lack of important transparency requirements or fair information practices. At a minimum, parents should know who has their students' data——excuse me, their children's data, and for what purpose, how it is secured, how to access and correct it, and when it will be destroyed. Optimally, parents should be notified in advance of

any disclosure outside of the school district and given the opportunity to opt out and delete information not necessary to the child's transcript.

FERPA is long overdue for an update. It must be modernized to assure students that their information will be protected from unauthorized access and misuse. Until then, our coalition strongly urges policymakers not to enable new or expanded data collections for research or any other purposes.

Thank you, again, for the opportunity to share our coalition's concerns with you today and for your consideration of my testimony.

[The statement of Ms. Stickland follows:]

Testimony of Rachael Stickland, Co-Founder, Co-Chair
Parent Coalition for Student Privacy

Before the United States House of Representatives
Committee on Education and the Workforce
Subcommittee on Early Childhood, Elementary and Secondary Education

Hearing on
"Exploring Opportunities to Strengthen Education Research While Protecting Student Privacy"

June 28, 2017

Thank you Chairman Rokita, Ranking Member Polis, and all the distinguished Members of the Subcommittee for inviting me to testify today on behalf of parents concerned about student privacy. My name is Rachael Stickland. I am a parent of two public school children in Colorado, the wife of a public schoolteacher, and the co-founder and co-chair of the Parent Coalition for Student Privacy, which represents a wide alliance of parents and organizations from across the nation.

Many parents first became aware of the severe threat to student privacy as a result of the controversy over inBloom Inc., which was created to collect and facilitate the disclosure of the personal data of millions of K12 students with a wide range of vendors and non-governmental third parties, without parental knowledge or consent. After inBloom collapsed in April 2014,[1] we formed our coalition to provide information to parents about threats to student privacy, and to give guidance as to best practices in data collection and disclosure. Since then, nearly 100 related state laws have been passed and just last month, we released a Parent Toolkit for Student privacy, in collaboration with the Campaign for Commercial-Free Childhood, to provide information and strategies to parents on how to advocate for stronger privacy protections at their children's schools and districts.

Today I would like to focus my testimony on the need for Congress to consider the broad implications to student privacy when data are collected and disclosed for various purposes, including research. I will share evidence showing how education agencies and institutions are currently unable to secure student data currently in their possession; explain why parents are apprehensive about state and federal collections of student information; and briefly outline why the Family Educational Rights and Privacy Act of 1974[2] (FERPA) must be updated before Congress moves forward with any proposal to use students' personal information for research or other purposes.

Inadequate security of student data

When inBloom first sparked a nationwide discussion on student privacy in 2013, parents were told that concerns over hacking were overblown because student data collected and disclosed by schools lacked "high target" financial information like bank account or credit card numbers. It turns out that data held by education institutions are a far bigger target than many had anticipated. Nearly every day a new breach of

---

[1] *See* Benjamin Herold, inBloom to shut down amid growing privacy concerns, Education Week, Apr. 21, 2014 http://blogs.edweek.org/edweek/DigitalEducation/2014/04/inbloom_to_shut_down_amid_growing_data_privacy_concerns.html
[2] 20 U.S.C. § 1232g

student data is reported. According to EdTech Strategies, a Virginia-based research consultancy, the number of breaches have more than doubled so far in 2017, and "U.S. K-12 public schools were reported to have experienced at least 147 separate cyber security-related incidents" in the last 18 months. Allegedly, students have had their identities stolen as a result of some of these incidents.[3] In fact, student data is extremely valuable to hackers for the purposes of identity theft because very few of them have negative credit histories.[4]

Colleges and universities also experience security threats to their networks and data repositories. In 2016 alone, 13% of "all higher education institutions" experienced a ransomware attack — "where a hacker takes control of the victim's information systems and encrypts data, preventing the owner from accessing it until the victim pays a sum of money."[5] This is the first time that the education sector outpaced the government, retail, and healthcare industries in this type of threat.

But cyber security incidents aren't limited to K-12 public schools and universities. As a 2015 report by the U.S. Government Accountability Office revealed, reports of security incidents involving breaches of personal information held by federal agencies sharply increased from 10,481 in 2009 to 27,624 in 2014 — an increase of 164 percent over five years — for a total of 144,439 reported instances.[6] The report also noted that these events can "adversely affect national security; [and] damage public health and safety."

The U.S. Department of Education has been found to have especially weak security standards in its collection and storage of student information, as reported by an audit released in November 2015 by the department's Inspector General. According to the audit, staff in the Inspector's office hacked into the Department's main IT system and gained unfettered access to personal data without anyone noticing. Overall, the audit found significant weaknesses in four out of the five security categories.[7] In May 2016, the government scorecard created to assess how well federal agencies were implementing data security measures awarded the Education Department an overall grade of D.[8]

Earlier this year, the I.R.S. disabled the FAFSA (Free Application for Federal Student Aid) Data Retrieval Tool on the U.S. Department of Education website until extra security protections could be added.[9] On

---

[3] *See* EdTech Strategies K-12 Cyber Incident Map, https://www.edtechstrategies.com/k-12-cyber-incident-map/ (147 separate incidents were catalogued from January 1, 2016 to June 21, 2017)

[4] *See* Kyra Gurney, Hack attacks highlight vulnerability of Florida schools to cyber crooks, Miami Herald, June 18, 2017, http://www.miamiherald.com/news/local/education/article156544589.html

[5] *See* Increasing Ransomware Attacks in Higher Education, JD Supra, January 18, 2017, http://www.jdsupra.com/legalnews/increasing-ransomware-attacks-in-higher-12045/

[6] United States Government Accountability Office testimony Before the Subcommittee on Regulatory Affairs and Federal Management, Committee on Homeland Security and Governmental Affairs, U.S. Senate and the Subcommittee on Oversight and Management Efficiency, Committee on Homeland Security, U.S. House of Representatives, November 17, 2015, http://www.gao.gov/assets/680/673678.pdf

[7] Jared Serbu, Government testers easily bypassed Education defenses in recent cyber audit, Federal News Radio, November 18, 2015, http://federalnewsradio.com/cybersecurity/2015/11/government-testers-easily-bypassed-education-defenses-recent-cyber-audit/

[8] Frank Konkel, Nextgov, May 18, 2016, http://www.nextgov.com/cio-briefing/2016/05/fitara-scorecard-fewer-agencies-get-failing-scores/128410/

[9] U.S Department of Education, Update: Internal Revenue Service (IRS) and Federal Student Aid (FSA) Statement on IRS Data Retrieval Tool (DRT), March 30, 2017, https://www.ed.gov/news/press-releases/update-internal-revenue-service-irs-and-federal-student-aid-fsa-statement-irs-data-retrieval-tool-drt

April 5th, the I.R.S. testified that the personal data of as many as 100,000 taxpayers may have been compromised through this tool.[10]

In fact, my family fell victim to the FAFSA hack.[11] In a letter dated April 11th from the I.R.S., my husband learned the agency had "recently identified suspicious activities by individuals obtaining tax data from the I.R.S. through the Department of Education FAFSA application." Six days later, the I.R.S. sent another letter notifying us that someone had "attempted to impersonate" us by filing a joint tax return using our name and social security number. Within days, we discovered that two unauthorized credit card accounts were opened in my husband's name. The I.R.S. has since provided one year of identity theft protection for my husband, but nothing for me or our children.

Unless you have been a victim of identity theft yourself, it's difficult to comprehend how it can take over your life – and how much work it takes to counter such an attack. Among the many lessons I've learned through this experience, the one that is most frustrating is finding out how difficult it is to protect our children's personal information. Requesting a simple credit freeze for a minor child with the three credit reporting agencies is a nerve-racking process which may require parents to submit copies of Social Security Cards or official birth certificates for both the parent and child, and a copy of the parent's driver's license. Expecting parents to willingly *expose* their own and their child's private information after an incident such as this in order to *protect* it, prevents parents like me from taking this somewhat obvious but very challenging step to prevent further identity theft.

Whether at the local, state, or federal level, student records are vulnerable to breaches and hacks in large part because FERPA has no baseline data security requirements for the collection, storage or transfer of personal student data— unlike, for example, personal health data subject to the HIPAA Security Rule. Last year, numerous organizations and privacy experts urged the Education Department to adopt basic security provisions, including encryption, privacy enhancing techniques, and breach notification, without success.[12] Until FERPA is updated to include robust data security protections, unauthorized access to information in education records will continue to place students at risk.

Federal and state collections of student data

While parents generally support the use of research and evidence to drive decision-making in education, policymakers must consider legitimate parental concerns over the use and disclosure of student data stored in statewide longitudinal data systems or SLDSs,[13] and any federal repository of personal student information, for research or other purposes. Parents generally believe education should be in the control

---

[10] *See* Alan Rappeport, Up to 100,000 Taxpayers Compromised in Fafsa Tool Breach, I.R.S. Says, The New York Times, April 6, 2017, https://www.nytimes.com/2017/04/06/us/politics/internal-revenue-service-breach-taxpayer-data.html

[11] *See* Daniel Douglas-Gabriel, Identity thieves may have hacked files of up to 100,000 financial aid applicants, The Washington Post, April 6, 2017, https://www.washingtonpost.com/news/grade-point/wp/2017/04/06/identity-thieves-may-have-hacked-files-of-up-to-100000-financial-aid-applicants/

[12] *See* the Electronic Privacy Information Center's letter to Education Secretary John King, June 6, 2016, https://epic.org/privacy/student/ED-Data-Security-Petition.pdf

[13] For more information, see the U.S. Department of Education's Statewide Longitudinal Data System webpage, https://www2.ed.gov/programs/slds/factsheet.html

of their local community and that a student's data should remain within the school or district for the benefit of the child. When state or federal agencies access identifiable student data without parental consent, many parents perceive this action as government overreach.

Other parents recognize that data collected on individuals, even when limited to certain elements and collected ostensibly for one purpose, could be expanded in scope and subjected to mission-creep, to be used for purposes beyond the original prescribed intent. K-12 student data currently maintained by most states in their SLDS contain upwards of 700 highly sensitive personal data elements, including students' disciplinary records, disabilities, immigration status, and homelessness data. The comprehensive nature of these data sets creates life-long dossiers on individuals, and could quickly become a go-to repository for other state agencies or the federal government. It's not difficult to imagine how this gold mine of data could be repurposed for political or ideological gain, which is one reason that our coalition supports maintaining the Higher Education Act's 2008 ban on the creation of a federal student unit-record system.[14]

A real-life example of the repurposing of education data was recently reported in Great Britain. There, a federal student data repository called the National Pupil Database (NPD) was intended to be maintained "solely for internal departmental use for the analytical, statistical and research purposes." But as Freedom of Information requests revealed, sensitive student information in the NPD had been accessed 39 times by police and the Home Office for various purposes, including to curb "abuse of immigration control."[15] A British advocacy organization, concerned with the rights of the undocumented students launched a national boycott, urging parents and schools to withhold their children's birthplace and nationality data from the government's annual NPD survey for this reason.[16]

The need to update and strengthen FERPA

Enacted more than forty years ago, FERPA became law when students' paper files were held under lock and key in the principal's office, and for the most part, never left the school. We've found that many parents believe this is still the case and are shocked to learn that troves of electronic student data are collected by schools and their contractors, stored online, and digitally disclosed to private companies to develop and deliver educational products and services, and to state and federal agencies for accountability, compliance and research purposes without their consent.

We believe the disconnect for parents stems in part from FERPA's lack of important transparency requirements, or fair information practices, for any company, agency, or organization who accesses student information. At a minimum, parents should be able to know who has their children's data and for what purpose, how it is secured, when it will be destroyed, and how to access and correct inaccurate information. Optimally, parents should be notified in advance of any disclosure of student data to anyone

---

[14] *See* the Parent Coalition for Student Privacy's comments submitted to the Commission for Evidence-Based Policymaking, November 14, 2016, https://www.studentprivacymatters.org/wp-content/uploads/2016/11/letter-to-CEP-w-signers-final-11.14.16-pdf.pdf

[15] *See* Kat Hall, Blighty's National Pupil Database has been used to control immigration, The Register, October 12, 2016, http://www.theregister.co.uk/2016/10/12/national_pupil_database_has_been_used_to_control_immigration/?mt=1476378123415

[16] *See* Against Borders for Children website, https://www.schoolsabc.net/

outside of the school or district and given the opportunity to opt out, and delete any information not necessary to their child's transcript.[17] Perhaps most importantly, robust security protections for the collection, storage and use of personal student data must be required.

Conclusion

FERPA was enacted before computer technology was used in schools, and is long overdue for an update. The law must be modernized to assure students that their personal information will be protected from unauthorized access, and misuse. Until then, our coalition strongly urges policymakers not to enable new or expanded data collections for research or any other purposes.

Thank you again for the opportunity to share our coalition's concerns with you today and for your consideration of my testimony.

[17] For additional recommendations, see the Parent Coalition for Student Privacy's Five Principles to Protect Student Privacy, https://www.studentprivacymatters.org/five-principles-to-protect-study-privacy/

Chairman ROKITA. Thank you, Ms. Stickland.

Dr. Schwartz, you're recognized for 5 minutes.

TESTIMONY OF DR. NATHANIEL SCHWARTZ, CHIEF RESEARCH AND STRATEGY OFFICER, TENNESSEE DEPARTMENT OF EDUCATION

Mr. SCHWARTZ. Thank you for the opportunity to be here.

During my 5 years with the Tennessee Department of Education, our agency has received four grants from the Institute of Education Sciences, or IES, and we have joined with Vanderbilt University to create the Tennessee Education Research Alliance, one of the first research-practice partnerships aimed directly at State policy in K-12 education.

We're quite proud in Tennessee about the major improvements we have seen in student achievement recently, with our States' scores in the National Assessment of Education Progress rising faster over the last 5 years than any other States. And we ascribe some of this progress to the ways that we anchor our work in a system of continuous research and evidence-driven improvements.

State departments of education like mine need rigorous and meaningful research in order to function effectively. In Tennessee, we rely on Federally supported research to determine our State's greatest needs, to identify and improve levers of change, and to evaluate program effectiveness.

In my written testimony, I describe the way our State used an IES continuous improvement grant to develop a model for coaching teachers that we hope will contribute to rapid reading gains for our State's neediest students. This kind of innovation on a highly relevant problem directly aligns with the aims of our Federally supported research system. But making this type of research the norm requires several key elements, not all of which are consistently available.

First and foremost, the work in Tennessee depends on the presence of a strong internal research team. For nearly every major research study that our State has conducted, including multiple gold-standard, randomized trials that are now influencing national conversations in areas ranging from preschool to early postsecondary, our in-house researchers identified the opportunities and facilitated the work. Although vital, this sort of State research office receives little direct support or explicit encouragement from the Federal Government.

Second, our work depends on IES support for long-term partnerships between our State department and independent research partners. Just as we need strong internal research teams, we also need a consistent set of knowledgeable partners who can provide an independent voice and ties to the larger research community. Currently, the grants that IES provides supporting partnerships between researchers and State agencies make up only about 12 percent of the total IES portfolio.

Lastly, we need secure systems that let us confidently conduct research while ensuring student privacy. Our partnership with the Tennessee Education Research Alliance has created systems to consolidate department data and allow this data, with student names

and IDs removed, to be used within a secure environment by approved education researchers.

These points lead to several recommendations. First, I ask that you preserve the Federal role in supporting research. The quality of our education in our country depends on decisions made at the State and local level. We need these decisions to be made with strong evidence and information.

Second, I'd encourage you to provide support for internal research teams within State departments of education. Strong, applied research work depends on the presence of local researchers inside education agencies who have the knowledge and expertise to conduct analyses, to seed new research, and to act on research findings. The Federal Government could take several steps to help build these offices both by offering direct financial support or by offering IES support for training programs designed specifically to develop the pool of researchers with the skills and desire to serve within State and local agencies.

Third, I'd invite you to build the emphasis within IES on long-term, rigorous research partnerships that will produce tangible State and district-level improvements and innovations. In particular, IES could do more to support long-term organizations like the Tennessee Education Research Alliance that build expertise, knowledge, and data security at the local level.

Fourth, I ask that you explicitly encourage the secure use of educational data for research purposes and that you clarify Federal guidance on certain issues. In my written testimony, I note some specific areas where the Federal Government could clear up uncertainty about the use of data that crosses administrative agencies. And here I agree, in many ways, with my colleague, Ms. Stickland.

The last point here gets a little down in the weeds as I near the end of my 5 minutes. And so I'd be happy to answer questions on this topic or refer you to my written testimony.

I thank you, once again, for the opportunity to discuss these important issues, and I look forward to answering whatever questions you might have. Thank you.

[The statement of Mr. Schwartz follows:]

Exploring Opportunities to Strengthen Education Research While Protecting Student Privacy

Nathaniel Schwartz
Chief Research and Strategy Officer, Tennessee Department of Education

Testimony before the U.S. House of Representatives
Committee on Education and the Workforce
Subcommittee on Early Childhood, Elementary, and Secondary Education

June 28, 2017

Chairman Rokita, Ranking Member Polis, and Members of the Subcommittee:

Thank you for the opportunity to discuss education research and student privacy concerns. My name is Nathaniel Schwartz and I am the Chief Research and Strategy Officer for the Tennessee Department of Education.

During my five years at the department, our agency has received four grants from the Institute of Education Sciences (IES), and we have joined with Vanderbilt University to create the Tennessee Education Research Alliance – one of the first research-practice partnerships aimed directly at state-level policy in K-12 education. I also serve on the governing board for the Regional Education Laboratory (REL) for the Appalachian Region.

We are quite proud in Tennessee about the major improvements we have seen in student achievement in past years – with our state's scores on the National Assessment of Education Progress rising faster over the last five years than any other state – and we ascribe some of this progress to the ways that we anchor our work in a system of continuous research and evidence-driven improvements. For this testimony, I will focus my comments on my state's experiences using federal education research resources, along with the ways we aim to balance research needs and privacy considerations, and I will offer several suggestions for moving forward.

Tennessee's Use of Federal Education Research Resources: A Case Study
State departments of education need rigorous and meaningful research in order to function effectively. In Tennessee, we rely on federally supported research to determine our state's greatest needs, to identify and improve levers of change, and to evaluate program effectiveness. While conducting this research often relies on confidential student data, long-term partnerships with researchers and the use of standard, masked data sets can protect student data from improper access.

I'd like to begin by briefly describing an example of what this process has looked like in our state and then highlight key points, both to illustrate what works well about the federal system and what might need to change.

I spoke at the outset about Tennessee's educational gains over the past years. But we're also a state where less than one third of our graduating seniors go on to earn a postsecondary degree,

and those that don't – those that enter the workforce with only a high school diploma – average an annual salary of around $10,000 during their first year out of high school. By third grade, only one-third of our students are proficient in the reading and critical thinking skills that are crucial to their long-term success.

Changing these trends – in Tennessee and elsewhere – requires states to develop and deploy new tools to transform the interactions that take place between teachers and students. To take on this challenge, we turned to research partners at the University of Pittsburgh to help us design a state-supported model for instructional coaching. Rigorous, though small-scale, randomized research trials had demonstrated the potential of coaching programs to help teachers improve their practice, but we faced a particular challenge at the state level in determining how to meaningfully support instructional coaching across over 140 school districts, each with different structures for teacher development.

To move forward, we applied for and received a $2.5 million IES continuous improvement grant. These grants are part of a relatively recent focus from IES on long-term partnerships between researchers and practitioners. They support a research process that covers the full policy cycle—from initial design and implementation up through rigorous evaluation—and they require grant applicants to create robust structures for integrating findings into the operation of the education agency. Using the tools of improvement science designed by the Carnegie Foundation for the Advancement of Teaching, we conducted small-scale, rapid-cycle tests of different elements of the coaching model, spreading our learning across a growing statewide network of instructional coaches. In the third year of the grant, after developing our coaching model, we recruited new districts and new coaches. Preliminary analysis (as we finalize this year's assessment data) indicates that the program has led to improvements in coach conversations and teacher instructional practice. As we develop the research base in this area, it will promote the expansion of effective programs and elimination of ineffective ones, resulting in more efficient and effective uses of limited available education resources.

The work with the University of Pittsburgh helped launch a broader initiative to take on our state's challenges in early literacy. Based on the coaching model, the commissioner and department leadership created an initiative called Read to be Ready that aims to use state-supported instructional coaching to bring our student English language arts proficiency rates to 75 percent over the next eight years. Importantly, we have made rigorous evaluation an integral element of the process. Working with the Tennessee Education Research Alliance at Vanderbilt, we conduct and analyze annual educator surveys that allow us to track changes in teacher perceptions over time. Our internal research team within our department analyzes formative evaluation data and feeds the data directly back to the team that is leading the literacy programming while an independent team of researchers with the Research Alliance will conduct a rigorous quantitative evaluation of program effects.

Conditions for Success

The work that I just described, now entering its fifth year, directly aligns with the aims of our federally supported research system. It is research designed to promote innovation on a problem of practice that is highly relevant, both for the state of Tennessee and for the forty-nine other

states across the country that are all similarly focused on strengthening classroom practice to place all students on a pathway to success after high school.

So what are the key elements of this work?

First and foremost, a strong internal research team within the Tennessee Department of Education. None of this work is possible without people within the department of education who are directly tasked with making research happen and integrating findings into department operations. For nearly every major research study that our state has conducted – including multiple gold-standard, randomized control trials that are now influencing national conversations in areas ranging from pre-school to early postsecondary – our in-house researchers identified the opportunities and facilitated the work. Our research team also conducts immediate analysis on all our department's major programs and ensures that this analysis gets immediately transformed into practice. I also want to highlight that the example I shared spanned two different state commissioners. A strong internal team and research agenda helps create important consistency in a dynamic political environment.

Though vital, this sort of state research office receives little direct support or explicit encouragement from the federal government. A 2015 scan of state education agencies found that only 29 states included offices devoted to data analysis, and far fewer had employees assigned solely to in-house research.[1] At the same time, the federal government devotes around $50 million per year to Regional Education Laboratories that in my opinion are no substitute for in-house expertise. This is partly a function of the long and complex approval process for REL research. Two winters ago, as the REL-Appalachia contract went up for bid, our state began discussions with potential REL contractors about research around our state's Response to Instruction and Intervention program. Over a year and a half later, we are still a couple months from officially launching the work. But it is also due to the literal and symbolic distance between our department and the REL staff. We have found the staff members we have worked with in our state's REL to be highly capable and thoughtful individuals, but in order to use research to create long-term program improvement, states need individuals within their agency who have the time and expertise to grapple with the findings and their implications for practice.[2] If we want research to be taken seriously at the state level, we should devote federal resources to incentivizing state research offices and to building the expertise to staff these offices.

Second, the work in Tennessee depends on IES support for long-term partnerships between our state department and independent research partners. IES continuous improvement grants, launched in 2013, are quite unique and represent a new way of thinking about educational innovation while still emphasizing rigorous research. The full set of grants that IES provides in support of applied partnerships between researchers and local educational agencies, including both continuous improvement and other partnership grants, have the potential to create long-term

[1] Schwartz, N. (2015). "Making Research Matter for the SEA." In *The SEA of the Future: Building Agency Capacity for Evidence-Based Policymaking*. The Center on Reinventing Public Education. Online at: www.bscpcenter.org/resources/publications/SEAF_5_11.2015_final.pdf.
[2] Harris, D. (2017). "Make It Local with In-House Researchers." *Education Next* blog post. Online at: www.educationnext.org/make-it-local-with-in-house-researchers.

expertise and capacity at the local level. Currently, these grants make up only about 12 percent of the total IES portfolio.

Third, I want to highlight the existence of the Tennessee Education Research Alliance. This new partnership between the department and a higher education institution is one of only a few state-level research organizations aimed at promoting long-term educational improvements through rigorous research, and it significantly augments our state's research capabilities. Just as states need strong internal research teams, we also need a ready set of knowledgeable partners who can provide an independent voice and ties to the larger research community. Equally importantly, the Tennessee Education Research Alliance manages longitudinal data sets that we have jointly created to facilitate the research process while closely guarding student privacy. Working with Vanderbilt data scientists, our department has put together systems to consolidate department data and allow this data, with student names and IDs removed to provide privacy and anonymity, to be used within a secure environment by approved education researchers across the country. Without this kind of system, we would be unable to conduct anything like the breadth of research that we currently have in place, both because of the amount of support work that it would require on the part of TDOE and because of the difficulties we would face in ensuring data security.

This speaks to the final element that contributed to the success of the example I described – specifically, that Tennessee has a system for securely and easily accessing longitudinal data for research purposes. Most of the education research that we are discussing here calls upon data that has been collected by schools for program needs outside of research. For research purposes, the key requirement is to design systems that ensure security once the data enters into the hands of researchers. In Tennessee, we work only with researchers who have strong track records both of nationally recognized research and secure data use. The researchers then sign well-vetted research agreements and conduct their research using secure environments and standardized, masked data sets. This is why the process that I described with the Tennessee Education Research Alliance is so very important. We need to be able to create and maintain systems for accessing research data and supporting responsible data use that do not place unsustainable demands on state agencies.

That need informs our state's stance on the intersection between data privacy and research. Schools collect a tremendous amount of data in this day and age, and we strongly believe that each additional data element that gets collected on our students must be balanced by privacy concerns. This means carefully scrutinizing data collection at all levels and collecting only what is necessary. However, this is quite different than prohibiting the use for research purposes of previously collected data. Instead, there is a place for explicit encouragement from the federal government that student data can and should be used by researchers when secure data handling practices are followed, although I will argue below that there are useful clarifications that might be provided by the federal government to make this more likely.

Recommendations

The points above lead to several specific recommendations as to how the federal government might improve upon its resources for research to increase the likelihood that these resources lead to innovations and improvements in our educational system.

1. Preserve the federal role in supporting research to maximize the impact and effectiveness of federal, state and local education programs.

   The quality of education in our country depends on decisions made at the state and local level. With so much riding on these decisions, we must do everything possible to ensure that these decisions are made from a perspective of strong evidence and information. Federal support for research increases the likelihood that those of us working in states can learn what works and ensure that we are making the best use of limited resources.

2. Provide greater support for internal research teams within state departments of education.

   Strong applied research work depends on the presence of local researchers inside education agencies who have the knowledge and expertise to conduct analyses, seed new research, and incorporate study findings into the work. The federal government could take several steps to help build these offices. One possibility would be to offer direct funding for this purpose. Another would be to create training programs designed specifically for state and local education agency researchers. Finding the right people to staff state research offices is a constant challenge. Currently, IES offers a number of training grants, but the vast majority end up training research professors rather than agency researchers. Federal support could seed applied masters programs – that include coursework in areas like statistics, psychometrics, research design, work with large data sets, and a practicum in a policy environment – to create a trained and ready workforce for internal research offices in state and local agencies.

3. Build the emphasis within IES on long-term, rigorous research partnerships that will produce tangible state and district-level improvements and innovations.

   To advance research that directly supports our agency, IES should increase the funding for grants that create or support formal partnerships between educational agencies and academic researchers. Here, I am referring to grant programs that include "Evaluation of State and Local Education Programs and Policies," "Continuous Improvement Research in Education," "Researcher-Practitioner Partnerships," and "Low-Cost Evaluations of Education Interventions." In particular, IES could do more to support long-term organizations like the Tennessee Education Research Alliance that build expertise, knowledge, and data security at the local level.

4. Encourage secure use of educational data for research purposes, and clarify guidance about the use of data that crosses administrative agencies.

   Student privacy matters, and states and districts can put strong systems in place to ensure that student private information is kept confidential when used for research purposes. In Tennessee, we have been able to create these systems by building partnerships that include strong data security and responsible and responsive data use. At the same time, there are certain areas where we have struggled to make sense of regulations due to vague or conflicting guidelines around data privacy, particularly in cases where data ownership crosses executive administrative agencies. For example, while most of the educational

data handled by our agency falls under the jurisdiction of the Family Educational Rights and Privacy Act (FERPA), our department also handles subsidized lunch data that is technically owned by the Department of Agriculture, and student health data from the Department of Health. Each of these is subject to a different set of restrictions. Making sense of the ways that this data can or cannot be used for research purposes has been challenging, and different localities have interpreted restrictions very differently. A next crucial step for the federal government would be to bring together the different executive agencies that handle education data to issue joint guidance about research use and data privacy specifically relating to data that crosses agency boundaries.

Thank you again for the opportunity to participate in this hearing and for your consideration of my testimony.

Chairman ROKITA. Thank you, Doctor.

Dr. Schanzenbach, you're recognized for 5 minutes.

TESTIMONY OF DR. DIANE WHITMORE SCHANZENBACH, DIRECTOR, THE HAMILTON PROJECT, THE BROOKINGS INSTITUTION

Ms. SCHANZENBACH. Thank you.

Thank you for the opportunity to appear before you today to discuss opportunities to strengthen education research while also protecting student privacy. I'm Dr. Diane Schanzenbach. I'm the director of the Hamilton Project and a senior fellow in Economic Studies at the Brookings Institution. I'm also a professor of Education and Social Policy at Northwestern University, where I direct a predoctoral training program funded by the Federal Institute of Education Sciences.

Our education system must continue to adapt and improve to ensure that our Nation's citizens are prepared for the jobs of the future and we make careful and efficient use of public resources. Rigorous and relevant education research is a critical component of an education system dedicated to continuous improvement.

As a researcher who has three children attending public elementary schools in Illinois, my husband and I both share concerns about the student privacy and data confidentiality. Any time a student's data are shared outside of school walls, for example with researchers such as myself, there are risks that are important to manage and minimize through appropriate protocols and procedures. At the same time, there are also large benefits that can be derived from researchers' access to data. The key is to ensure that we mitigate any potential risks without foregoing the desperately needed progress and benefits that research can have on the education system.

Fortunately, I know firsthand, from my experience as a researcher and a parent, that individual students' data can be appropriately safeguarded, while simultaneously being productively used to assess and improve education. I'm optimistic that, during today's hearing, we'll be able to address some of the key misconceptions regarding what data are made available to researchers and how the data are used. I'm going to speak briefly to how researchers doing work with secure student-level data must handle the data by law.

Before access to data is granted, there are detailed written agreements between the researcher and the district or State partner. These always include instructions on who may use the data and how the data may be used. For example, with one partner, I can only access their dataset on a stand-alone desktop computer with no access to the internet that I keep in my office. That computer has to be kept in a locked safe when it's not in use. Of course, I may only use the data for a specific approved project, and I no longer have access to the data once that project is complete.

While these datasets have information about individual students, the research itself is never about individual students. While researchers need access to individual-level data to conduct the analysis, the point is never to hone in on one individual, but instead to use a large number of individuals' data to understand broader

trends. In fact, I'm not permitted to publish results that might inadvertently identify any individual.

In my experience, when data from State or district longitudinal data systems are shared with external researchers, they do not contain identifying information such as names or addresses and oftentimes contain anonymized student numbers.

The emphasis on rigorous and relevant research and an increasing access to administrative datasets has led to a dramatic expansion of valuable insights. While there are many, many success stories, I'll highlight a few recent studies that have already yielded demonstrable results and significant impact. Researchers have measured the diversity of impacts of charter schools on student achievement. It also measured the spillover benefits of school voucher programs on the children who stay behind in regular public schools.

One of my favorite examples is from Chicago. Leveraging longitudinal data, researchers discovered early-warning indicators that predict high school dropout. Based on this research, they developed a simple Freshmen On-Track indicator based on ninth grade credit completion and course failures. Armed with this new information from research about what to look for, individual schools now monitor their own students' progress on this measure and can intervene early to get specific ninth and tenth graders at high risk of dropping out back on track to improve their likelihood of graduating from high school. School districts all across the country have adopted this approach to improve their graduation rates as well.

While there are many more success stories, one factor remains constant: Investments in data systems that support cutting-edge research, offer an impactful mechanism to improve our education system and the skills of millions of American students. We've seen significant improvements in education policy and practice, spurred by rigorous and relevant research. To be economically competitive in a rapidly evolving world market, it is imperative that we continue to improve the U.S. education system and increase the system's return on investment. Additional research will be key to driving these needed improvements. Along with the strong benefits of research, however, comes the need to protect student privacy and data confidentiality. Both goals can be achieved by helping States adopt best practices to protect confidentiality while still partnering with researchers. Thank you.

[The statement of Ms. Schanzenbach follows:]

Testimony of Diane Whitmore Schanzenbach
"Exploring Opportunities to Strengthen Education Research While Protecting Student Privacy"
U.S. House Committee on Education and the Workforce
Subcommittee on Early Childhood, Elementary, and Secondary Education
6/28/17

Subcommittee Chair Rokita, Ranking Member Polis, and Members of the Committee, thank you for the opportunity to appear before you today to discuss opportunities to strengthen education research while protecting student privacy.

I am Dr. Diane Whitmore Schanzenbach, and I am Director of the Hamilton Project and a Senior Fellow in Economic Studies at the Brookings Institution. I am Professor of Education and Social Policy at Northwestern University, and conduct research on policies related to children, including education policy. At Northwestern, I serve as the director of the Multidisciplinary Program in Education Studies—a pre-doctoral training program sponsored by the federal Institute of Education Sciences. I am also a member a of national interdisciplinary network funded by the National Science Foundation and headed by my Northwestern colleague Dr. David Figlio, that includes scholars, policymakers and education administrators working together using longitudinal data to better inform research-based practice.

My testimony reflects my experience conducting research studies and engaging with practitioners for over 20 years, using federal education surveys collected by the National Center for Education Statistics, as well as longitudinal state and district data systems that have the capacity to follow students over time.

Our education system must continue to adapt and improve to ensure that our nation is prepared for the jobs of the future. This includes better educating an increasingly diverse population across all skill domains, and making more careful, efficient use of public resources. Rigorous and relevant education research on policy and practice are a critical component of an education system dedicated to continuous improvement.

Over the last 15 years, due in large part to the transformational efforts spearheaded by Dr. Russ Whitehurst as the first IES director, we have seen a welcome increase in the use of evidence to guide education policy. Smart federal investments have driven this trend by: increasing the supply of rigorous, relevant evidence by funding important research studies and improving the training of a new generation of scholars; supporting data systems that promote the highest-quality research; and providing incentives for productive collaborations between policymakers and practitioners, thereby ensuring that researchers are asking relevant questions and delivering results that are useful to practitioners. In recognition and support of the rigor and value of education research, when Congress authorized the Every Student Succeeds Act, you committed to high standards of evidence to drive improvements in student outcomes.

Federal investment in education is valuable

Investment in education research is a public good—it provides wide-ranging benefits to all Americans, and much of it would the not occur without support from government or philanthropy. This is because individual states and school districts do not have adequate incentives to invest in research on their own. Without appropriate federal investments, the country would end up with less research than is needed. Fortunately, smart federal investments have increased the amount of research being conducted, and schools and districts are using the knowledge gleaned through research to improve the efficiency and performance of our education system.

These investments have not been particularly costly, as the education sector spends relatively little on research and development. Overall, the U.S. allocates about 3 percent of its total expenditures to R&D. In education, however, only 0.2 percent of spending goes to R&D. Despite relatively modest spending on R&D, in recent years this investment has been highly leveraged to make a large impact on the field.

The Institute for Education Sciences: Investing in "What Works" in Education Research

Much of the impact research has had on improving education policy and practice is due to the work of the Institute of Education Sciences (IES) to increase the acceptable standards of rigor in education research. In recent years, it has also particularly emphasized improving the relevance and usability of research. IES has developed a system to communicate research quality clearly to users, through its "What Works Clearinghouse" and its categorization of research findings based on the quality of the underlying research design.

Providing access to and support of data collection is another key aspect of how IES improves our nation's education research. As you are aware, data collection comes in multiple forms ranging from nationally representative sample surveys to state and local longitudinal data systems. Through the National Center for Education Statistics, IES collects extremely important federal survey data, including the National Assessment of Education Progress (NAEP), also known as the "Nation's Report Card," which allows us to monitor progress in reading, math, and other subjects across states and over time. While the federal government supports states' longitudinal data systems, there are no student population-level data held by the federal government. However, there are limited and appropriate school-level censuses that are valuable to parents, educators, researchers, and policymakers in learning about education in America. One example of a Congressionally authorized, valuable, limited, and complete census of schools is the Civil Rights Data collection, which has shed light on the problem of chronic absenteeism. As a result of data publication and work done by myself and others, many schools have started to monitor chronic absenteeism more closely, and the majority of states have proposed including rates of chronic absenteeism as a new accountability metric in their ESSA plans. IES investments continue to yield significant gains toward supporting instruction, conducting evaluation and research, and monitoring return on investment due to IES funding

dedicated to help states develop infrastructure to use school administrative data through the Statewide Longitudinal Database Grant program funded by Congress.

IES has helped attract and develop a growing number of researchers with appropriate tools to conduct highly rigorous studies that have relevance to policy and practice. I have experienced this first-hand through the Institute for Education Sciences-funded pre-doctoral training program that I direct at Northwestern University, which is in the midst of training 24 doctoral candidates from different disciplines to pursue a range of careers in education research. As you may know, IES requires that we include a focus on training students on how to meaningfully engage key policy and practitioner stakeholders with usable research that will demonstrably improve our nation's education system. As a result of IES' investment in funding "what works" in education research, you will find similar programs are training researchers at other leading universities throughout the U.S, which have already produced remarkable education policy researchers.

In sum, IES has transformed education research by setting high standards for both rigor and relevance in research, and investing in development of both talent and infrastructure to further these goals. IES has never supported federal warehousing of individual student data and my understanding is that current proposals continue to ban the creation of this sort of data. In my opinion, in its short history, IES has been an unqualified success.

Concerns about data access and privacy

As a researcher with 3 children attending public elementary schools in Illinois, my husband and I both share concerns about student privacy and data confidentiality. We have found it useful to regularly monitor the data that our schools collect on our children, and the schools have been very cooperative in communicating with us as we monitor our kids' progress. And we appreciate the protections that the federal government, state, and school has implemented when we are inquiring about an individual child. For example, we have a tutor for one of our sons, and we want her to be able to exchange information and coordinate with our son's classroom teachers. We have to sign a document explicitly giving permission to the teachers to provide this information. We are glad that there are privacy protections like this in place, and also glad that there is a way to grant permission to facilitate the exchange of information needed to make sure our investments in his education are as productive as possible.

Any time individual student data are shared outside of the school walls—for example, with researchers such as myself—there are risks that are important to manage and minimize through appropriate protocols and procedures. At the same time, there are also immense and demonstrable benefits that can be derived from researchers' access to data. The key is to ensure that we mitigate any potential risks without foregoing the desperately needed progress and benefits that this research can have not only on our children's education, but ultimately outside of the classroom – on postsecondary access and success, career outcomes, and quality of life.

Fortunately, I know first-hand from my experience as a researcher and a parent that individual students' data can be appropriately safeguarded, while simultaneously being productively used to assess and improve education. To this end, I am optimistic that during today's hearing we will be able to address some of the key misconceptions regarding what data are made available to researchers, and how the data are used. I am going to speak briefly to how a researcher doing work with secure student-level data must handle data by law.

First, it is important to keep in mind that before access to data is granted, there are detailed memorandums of agreement between the researcher and the district or state partner. These agreements always include instructions on who may have access to the data and how the data may be accessed and maintained (e.g. only on a particular secure server, or an encrypted computer, or only on a standalone computer that cannot access the internet that must be kept in a locked safe when not in use). I apply to use the data for a specific project, and no longer have access to the data when the project is complete.

While these data have information about individual students, the research itself is never about individual students. As a researcher, when my colleagues and I use data like this, we conduct statistical analyses of trends, averages, and other aggregate patterns. While we need access to individual-level data to conduct the analysis, the point is never to hone in on one individual, but instead to use a large number of individuals' data to understand broader trends. In fact, if there is a chance that an analysis of aggregate data about a particular subgroup of students might inadvertently lead to the identification of a student, I am not permitted to publish these results. Education research is a fundamentally different use of data than my earlier example about our teacher and tutor exchanging data about my son specifically.

In my experience, when data from state or district longitudinal data systems are shared with external researchers, they do not contain identifying information such as names or addresses, and often times contain an anonymized student number. What is included is basic demographic information, enrollment information, test scores, attendance rates, and other administrative records that are necessary for research.

As an additional safeguard, researchers are subject to civil and criminal penalties for the misuse of data—which underscores both the government' and research sector's commitment to ensuring that student privacy is not compromised.

What have we learned from the resulting research?

The emphasis on rigorous, relevant research, together with the concerted effort to expand the pipeline of well-trained researchers and an increasing access to administrative datasets, has led to a dramatic expansion of valuable insights. While the success stories are seemingly immeasurable, I will highlight a few, recent studies that have already yielded demonstrable results and significant impact. These studies include, but are not limited to:

- Using state data systems, researchers have helped us understand under what circumstances low-performing schools can be turned around and improved, and the impacts of closing persistently underperforming schools.

- Enabling researchers to measure the diversity of impacts of charter schools on student achievement, the impact of the small high schools movement, and the spillover effects of school voucher programs on children in regular public schools—that is, as regular public schools and private schools compete for students, the result of this competition can benefit all children regardless of which type of school they choose.

- Allowing researchers to quantify the value of class size reduction, of certain types of professional development, and of small-group tutoring, so that districts are informed about costs and benefits as they decide how to allocate their limited resources.

- Leveraging longitudinal data from Chicago, researchers discovered early warning indicators that predict high school dropout. Based on this research, they developed a simple "Freshman On-Track" indicator based on 9th grade credit completion and course failures, and found that on-track students are almost four times as likely to go on to graduate from high school than off-track students. Armed with new information from research about what to look for, individual schools now monitor their own students' progress on this measure, and can intervene early, to get specific 9th and 10th graders at higher risk of dropping out back on track and improve their likelihood of graduating. School districts across the country, including New York City, Dallas, Albuquerque, Omaha and Philadelphia have adopted this approach to improve their graduation rates as well.

Another local example comes from work we are doing in conjunction with the high school district in Evanston, Illinois, under Northwestern's IES training grant. The district had several research questions of interest, but did not have the internal resources to answer them. For example, they offer many different types of academic support service to their students, and wanted an assessment of which combination of them were most effective for various subgroups of students. Another question they had was whether there are systematic differences in student outcomes from taking Advanced Placement vs. regular biology class for students who were academically prepared to take either option. Our PhD candidates worked in groups to research these questions, and presented their findings to district officials. It was a real win-win: our students got real-world experience conducting policy-relevant research, and the district got needed help to answer important questions of direct relevance to practice.

While the success stories are seemingly endless, one factor remains constant: investments in data systems that support cutting-edge research offer an impactful mechanism to leverage state, federal and philanthropic funding to improve our education system and quality of life for millions of American children and their families.

Recommendations/Summary

We have seen significant improvements in education policy and practice spurred by rigorous, relevant research. To be economically competitive in a rapidly evolving world market, it is imperative that we continue to improve the U.S. education system, and increase the system's return on investment. Additional research will be key to driving these needed improvements. Along with the strong benefits of research, however, comes the need to protect student privacy and data confidentiality. Both goals can be achieved by helping states adopt best practices to protect confidentiality while still partnering with researchers.

Chairman ROKITA. Thank you, Doctor.

Dr. Whitehurst, you're recognized for 5 minutes.

TESTIMONY OF DR. GROVER J. "RUSS" WHITEHURST, SENIOR FELLOW IN ECONOMIC STUDIES, CENTER ON CHILDREN AND FAMILIES, THE BROOKINGS INSTITUTION

Mr. WHITEHURST. Thank you.

As someone who's been an active researcher and user of privacy-protected student data, and as someone who's the founding director of the Institute of Education Sciences, I'm very appreciative for the opportunity to testify today.

For those of you not familiar with it, the mission of the Institute of Education Sciences, IES, is to report statistics on the condition of education in the U.S., to fund research on educational programs and practices that support student learning, and to evaluate the effectiveness of Federal and other education programs.

The Federal Education Research Enterprise was established by the Cooperative Research Act of 1954. And I believe it was a failure prior to the establishment of IES in 2002. Books have been written about this. I will summarize with a quote from the National Academies of Sciences. They did a report on the immediate predecessor to IES. That was the Office of Education Research and Improvement. They cataloged a litany of problems with that agency and concluded with, quote, "OERI needs to be rebuilt."

Congress did that with the Education Sciences Reform Act of 2002. Here's what the Office of Management and Budget said 7 years later about IES: Quote, "Since its creation by the Education Sciences Reform Act, IES has transformed the quality and rigor of education research within the Department of Education and increased the demand for scientifically based evidence of effectiveness in the education field as a whole." I would refer to the previous two witnesses as evidence in point to that.

This leads me to the first of four points and recommendations.

First, if it isn't broke, don't fix it.

The operational success of IES for the last 15 years has spent too long serving directors, several leaders delegated the responsibility of the director, and three different Presidential administrations. The stability and performance across variations in leadership is due to the legislation itself. The legislation includes clear——gives IES a clear and focused mission, statutory independence from political interference, highly qualified staff, and strong internal controls for quality.

So I recommend that as you take up reauthorization of IES, you retain the core components of the Education Sciences Reform Act and focus on the ways to add to functions of IES that will make it more useful.

The second point is follow the money. IES operates with an annual budget of a little more than $600 million. This is a small amount in relative terms, only about 1 percent of the Department's discretionary budget. On the bright side, the IES budget has risen over the years, and it has not whipsawed. That's very important.

My immediate concern here today is not so much the line item program budget, but the budget for salaries and expenses. That budget is drawn from the Department's omnibus budget for admin-

istration. It's at the discretion of the Secretary. IES has substantial and absolutely essential independent authority to carry out its work. But it would be easy for an administration that is displeased with certain products because they're off message or simply has other priorities for its administrative budget, to cripple IES through reductions in funding for its salaries and expenses. The danger is evident in the Department's present plans for an across-the-board reduction in force that may cut IES staff, already small in number and operating with high efficiency, to the bone.

Thus, I recommend that in reauthorizing IES, this committee provide for a specific budget for the administration of IES.

Third point is that time is of the essence. The yield in terms of useable products from individual IES investments typically takes years to emerge. Research——a research firm gets a contract. They give you the results 4 years later. That's important work. There's a natural timeline to it. At the same time, a lot of education policy occurs in timeframes measured in months, not in years, and that decision-making often occurs bereft of any real insights from the research that already may exist.

Consider, for example, the Trump administration's fiscal year 2018 budget proposal to cut funding to colleges and universities for the Federal Work-Study Program. This Congress will need to consider that proposal. Wouldn't it be nice if IES were funding a program activity that, in a matter of months, could generate an objective report on what we know and don't know about Federal Work Study, how it's performing, who it serves, and what the consequences would be for changing it?

I recommend, thus, that you authorize a budget for IES to generate independent, quick turnaround reports on high-impact policy issues that arise in education policy at the Federal and State levels.

Finally, point four speaks to the privacy issues we are talking about today. There's invaluable information to improve education in large administrative databases of student records. Mining that data has risks that must be acknowledged and eliminated. The computational analysis of large administrative datasets can reveal patterns, trends, and associations that provide very important insights about how to improve education.

Chairman ROKITA. Thank you, Doctor. Thank you, Doctor. The time's expired. You'll have to take care of it in questioning. I'm sure you'll get those points in.

Mr. WHITEHURST. All right.

[The statement of Mr. Whitehurst follows:]

Testimony of Grover J. Whitehurst

Exploring Opportunities to Strengthen Education Research While Protecting Student Privacy

U.S. House of Representatives

Committee on Education and the Workforce

Subcommittee on Early Childhood, Elementary, and Secondary Education

June 28, 2017

Mr. Chairman and Members of the Subcommittee:

As someone who has been an active researcher and user of privacy protected student data, as well as the founding director of the Institute of Education Sciences, I am very appreciative of the opportunity to testify today.

The mission of IES is to report statistics on the condition of education in the United States; to fund research on educational programs and practices that support student learning; and to evaluate the effectiveness of Federal and other education programs.

The federal education research enterprise, which was established by the Cooperative Research Act of 1954, was a failure prior to the establishment of IES in 2002. Books have been written about that. I will summarize with a quote from a National Academies of Science report on the immediate predecessor to IES, the Office of Educational Research and Improvement. After cataloging a litany of problems with the agency, the NAS committee concluded that:

> *"OERI needs to be rebuilt."*[i]

Congress did that with the Education Sciences Reform Act of 2002. Here is what the Office of Management and Budget said in 2008 in its program assessment rating of IES:

> *Since its creation by the Education Sciences Reform Act of 2002, IES has transformed the quality and rigor of education research within the Department of Education and increased the demand for scientifically based evidence of effectiveness in the education field as a whole.*[ii]

This leads me to the first of four points and recommendations:

1. **If it ain't broke, don't fix it.** The operational success of IES in the 15 years since it was founded has spanned two long-serving directors, several leaders delegated the responsibilities of the director, and three different presidential administrations. This stability in performance across variations in leadership is due to design features in the Education Sciences Reform Act. These include a clear and focused mission; statutory independence from political interference in

research and reports; highly qualified staff; strong internal controls for quality of products; and predictable funding.

I recommend that as you take up the reauthorization of IES, you retain the core components of the Education Sciences Reform Act of 2002, and focus on ways to add functions to IES that will make it even more useful.

2. **Follow the money**. IES operates with an annual budget of a little more than $600 million. This amount is small in relative terms -- only about 1% of the Department of Education's discretionary budget. But on the bright side, the IES budget has risen over the years and has not whipsawed. My immediate concern is not so much with the line item program budget of IES, but with its budget for salaries and expenses, which is drawn from the Department's omnibus budget for administration and is at the discretion of the Secretary. IES has substantial and absolutely essential independent statutory authority to carry out its work, but it would be easy for an administration displeased because IES was reporting findings that were off-message, or for an administration that simply had other priorities for its administrative budget, to cripple IES through reductions in funding for its salaries and expenses. This danger is evident in the Department's present plans for an across-the-board reduction in force that may cut IES staff, already small in number and operating with high efficiency, to the bone.

   I recommend that in reauthorizing IES, this Committee provide for a specific budget for administration of IES. The funding for this would come from a corresponding reduction in the Department's omnibus budget for administration. This would strengthen the independence of IES from political control compared to the present arrangement in which the allocation of funds to cover the staffing of IES depends on the good will and priorities of the administration in power.

3. **Time is of the essence**. The yield in terms of usable products from individual IES investments typically takes years to emerge, e.g., a research firm gets a multiyear contract to evaluate the impact of a big budget federal program and a public report of that work is released four years later. There is a natural timeline of these activities that can't be cut short, and the work is critically important. At the same time, a lot of education policy making occurs in time frames measured in months rather than years and, presently, is usually bereft of high quality, objective research evidence that is summarized in ways that will inform decision makers. Consider, for example, the Trump administration's FY18 budget proposal to cut funding to colleges and universities for the federal work-study program. This Congress will need to consider that proposal. Wouldn't it be great if IES were funding a program activity that, in a matter of months, could generate an objective report on what we know and don't know about how federal work study is performing, who it serves, and what its consequences are for participating students?

I recommend that you authorize a budget for IES to generate independent quick turn-around reports on high impact policy issues that arise in education policy at the federal and state levels. This could be paid for by repositioning funds elsewhere in the Department's administration or national activities budgets that are typically spent on related but non-politically independent activities.[iii]

4. **Invaluable information to improve education is found in large administrative databases of student records. Mining it has risks that must be acknowledged and eliminated**. The computational analysis of large administrative data sets can reveal patterns, trends, and associations that provide important insights on how to improve education policy and practice.

There are two things that stand in the way of the wide utilization of these databases to fuel smart education reform. The first is legitimate concerns about the protection of the privacy of individual student education records. No parent wants their child's identity and test scores in 6th grade available to hackers, or released on the internet by mistake, or expropriated for commercial purposes by businesses with which school districts enter into contractual relationships. The protection of the privacy of digital records, whether educational or otherwise, is not child's play. I've been told on the Q.T. by state education officials that they worry greatly about the security of their statewide longitudinal student records because they don't have in their offices and can't afford to hire from outside the expertise to secure them. This has to be fixed before this Congress or the public you represent should be comfortable with the merging of student records to support large scale data analytics.

The second thing that has to be fixed, which is bound to the solution of the privacy issue, is the availability of student records to education researchers and policy analysts outside of state education bureaucracies. Through the Statewide Longitudinal Database Grant program, funded by Congress and carried out by IES, the states have received $721 million to support their student data systems.[iv] The legislative authority for these grants, found in Title II of the Education Sciences Reform Act, calls for the funds to be awarded to support data systems "to facilitate research." Forty-seven states have received awards under this program. Using a liberal standard, maybe three of them allow ready access to facilitate research. Every other state has the data locked away or available with heavily burdensome obstacles. States are, perhaps understandably, not eager to give independent researchers access to data that may lead to findings that call state policies and practices into question. And they are aware of their data security issues and their lack of expertise in how to share data so that it is truly de-identified, e.g., so that Susie's test scores are in the database but no-one can link them to the person of Susie. It is just easiest and safest for states to say no to requests for access.

I recommend that in reauthorizing IES and in budgeting for another round of funding of the Statewide Longitudinal Data Systems grants this Committee support IES in carrying out a competition in which funds are available to states to establish data centers that have frontline technical responsibilities for insuring the privacy of individually identifiable student data from

external threats and for enabling easy access by outside researchers to non-personally identifiable longitudinal data (de-identified and anonymous).[v] The North Carolina Education Data Center at Duke University provides a longstanding example of how states could accomplish this.

Thank you for the opportunity to testify. I look forward to your questions and comments.

---

[i] https://www.nap.edu/read/1973/chapter/2#3

[ii] https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/omb/expectmore///rating/perform.html

[iii] For instance, the Office of Planning, Evaluation, and Policy Development carries out evaluation and planning studies to support the Secretary's priorities. Frequently these studies overlap functions that are fulfilled by IES, which, unlike OPEPD, is independent of political control and has high standards for quality and objectivity. Funds that flow through OPEPD for IES-like activities would be more productively spent by IES on quick-turnaround public reports summarizing objectively what is known from research relevant to impending education policy decision making.

[iv] https://nces.ed.gov/programs/slds/ppt/SLDS_PPT.pptx

[v] There are several ways to provide non-personally identifiable data to independent researchers that go far beyond simply stripping obviously personally identifiable information out of a database of student records. For example, researchers can be required to analyze data through a web program that can only produce aggregate results and that does not involve any transfer of or access to individual data. Thus, the researcher can run a regression analysis on data of interest without ever seeing or having access to the data on which the analysis is run, which, itself, has already been de-identified before being provided as the backend to the web-based analysis tool. The general public as well as researchers can do this today for NAEP data on the IES/NCES website with the Data Explorer.

Chairman ROKITA. At this time, I'm going to recognize members for member questioning. And instead of recognizing myself, I'm going to reserve and instead recognize the chairman of the full committee, Chairwoman Dr. Foxx. You're recognized for 5 minutes.

Ms. FOXX. Thank you, Mr. Chairman.

And I want to thank our panelists for being here today. We appreciate your making the time to come.

Ms. Stickland, I'm sorry to hear about what happened to your family with the DRT. We've had a whole hearing on that issue, as you may know. But it, unfortunately, highlights concerns parents have about the collection of valuable information of students.

When you hear accomplished researchers like Dr. Whitehurst talk about how they protect the data they get so there's not as great a risk with sharing that data, does that give you peace of mind about sharing student data?

Ms. STICKLAND. Thank you for the question. Parents aren't opposed to research or evidence used in making decisions for education. But I think what the FAFSA situation did reveal is that no data is completely safe. When it's linked to other agency data, it becomes especially vulnerable, and that linkage is a disclosure. So while we understand and appreciate that researchers are very cautious with data and there are measures to take to try and deidentify data and keep it confidential, it still poses a very significant risk.

Ms. FOXX. Thank you.

Dr. Schwartz, you've heard what Ms. Stickland has said about the breaches. What more do you believe your State could do to limit the data collected in the first place? And of the data collected, is there more the State could do to limit what is shared with outside entities without compromising meaningful feedback on school and program effectiveness?

And I think the example given about helping students complete school and working within the school is a great example. But there was no need for that information to be shared with anybody else for the school to make the——work with those students, it seems to me. But please——please respond.

Mr. SCHWARTZ. It is critical——thank you. It is critical that we protect student privacy while also conducting research. And I think that we in our State have spent a lot of time thinking about how we can——how we can have these two things live together within our States. So we have a number of State laws on the books that require us to make public and transparent every data element that gets collected at the State level and to make public the ways that this data is being used for research purposes.

So this isn't something being done behind closed doors. This is something that we want to disclose and make very clear what we're doing and why we're doing it. Because, as Ms. Stickland points out, I think there are clear, clear benefits to doing this right. I would also argue that there are clear benefits to, at times, linking data across agencies.

So our——our strategic plan in Tennessee asks us to think about where students go beyond high school. For many years, the goal of bringing students to——of having students pass through our K-12 education system was high school graduation. But that's not

enough. And one of the things we've been able to look at by linking data is to understand, so what happens to students who leave our high schools with only a high school degree and enter the workforce in Tennessee? The answer is that they are annually making a salary of somewhere around $10,000.

We couldn't answer those questions without linking data. What I think we need are the secure systems for when that data is linked being absolutely sure that data is completely secure and ensures student privacy. And I entirely agree with Ms. Stickland's points about revamping some of our laws to make sure that is the case.

Ms. FOXX. Dr. Whitehurst, you talk about the need for IES to support quick turnaround reports on high-impact policy issues. But is the problem the lack of quick turnaround capability or is the problem a lack of truly relevant research within existing research projects? Why would we need a quick turnaround study on a Federal program that might be impacted by a budget proposal? Would not that program have been evaluated already?

Mr. WHITEHURST. Well, in some cases, programs have been or components of programs have been evaluated already. But nobody's in a position, through Federal funding now, to synthesize that research, gather it together, and make reasonable conclusions about what we know going forward. On Federal Work-Study, for example, there is a body of research on it. It's spread over a number of years, a number of research teams, a number of universities. Somebody has to be responsible for gathering that together, drawing conclusions that are objective, not pushed by political point of view, and that can be expected to do that in a trustworthy fashion. I think IES has a role in doing that. It's not currently fulfilling that role because there is no budget or particular authority to do so.

Ms. FOXX. Thank you very much.

Thank you, Mr. Chairman.

Mr. THOMPSON. [Presiding.] The gentlelady yields back.

I now recognize Mr. Scott from Virginia, the ranking member of the full Education and Workforce Committee.

Mr. SCOTT. Thank you, Mr. Chairman. And thank you for convening this hearing.

First, Ms. Schanzenbach, one of the sensitive data points would be immigration status. It's my understanding that schools can't even ask about immigration status. So would that not be missing from the data?

Ms. SCHANZENBACH. I don't know about that legally. But I know that, as a researcher, I've never had access to anyone's legal status.

Mr. SCOTT. You mentioned studies in Chicago predicting dropouts. What were the conclusions and how would you target——how would they help you target money to maximize cost benefit of investments?

Ms. SCHANZENBACH. Sure. So they——the researchers there looked to see what sort of factors predict high school dropout rates and what we can figure out, early-on, so we can intervene with kids, you know, in eighth grade or ninth grade or tenth grade. And they looked at a whole range of different potential triggers that then later on predict. So we really needed the solid research, you know, that they were able to do with that longitudinal data system.

What they found was ninth grade credit attainment, and some other factors that were observable in ninth grade, were really good predictors of later high school graduation. So then they told that to schools. The schools were able to target kids who were sort of dropping off pace that way, get them sort of course-corrected back in ninth grade, maybe tenth grade. And so then they've seen their high school graduation rates increase. And lots of other cities have adopted the same program. I think it's a real success of research.

Mr. SCOTT. Thank you.

Mr. Schwartz, you indicated research on what happened to people after high school. I assume that one of the factors you looked into is what predictors there would be. How did you use that research to help students finish high school and get on the way to additional education?

Mr. SCHWARTZ. Sure. Many of the things we've looked at in Tennessee, actually, mirror the work from Chicago that Dr. Schanzenbach is referring to. And the new ESSA law has actually allowed us to think about how we integrate that into the day-to-day work of our schools.

So one of the things that ESSA asks States to do as they set up their State-level accountability systems is to think about——think about indicators other than test scores that could be used to hold schools accountable for the progress that students are making along the way.

One of the things the Chicago work has found, and that we've also found looking at data in Tennessee, is that chronic absenteeism in those early years matters a lot toward how students succeed both across the course of high school, but then also what they do following high school. And so we have added to our accountability policies an indicator on chronic absenteeism that we will use to monitor school progress over the years.

Mr. SCOTT. And has that action produced results?

Mr. SCHWARTZ. We are in year one.

Mr. SCOTT. Okay. And, Dr. Whitehurst, you had an interesting idea that we ought to make our decisions based on research. That's a fairly unknown concept around here, so I appreciate it.

But how are research projects now identified and how are the researchers selected?

Mr. WHITEHURST. The researchers are selected through a competitive process much like that that would occur at the National Institutes of Health as people are seeking grants to do health research.

The topics themselves are broad topics, like a focus on teacher quality or dropout prevention, are really the responsibility of the director of IES to propose. It goes through the Board of Education Sciences. There's an annual report. There's input from a variety of people. And that's a process that needs to be quite sensitive to changing——changing priorities, education policies, and political policy. Things happen. You need to do research on those things, and it's the responsibility of the agency to be responsive to those needs.

Mr. SCOTT. And after you've done the research, how does the public benefit from the results?

Mr. WHITEHURST. Well, it can benefit from——in a number of ways. We've heard, for example, through the testimony of Dr. Schwartz, how citizens of Tennessee have benefited from research done there, or in the case of Dr. Schanzenbach, how students in Chicago benefit.

Mr. SCOTT. Can the rest of the country benefit from what goes on in Tennessee? Do you disseminate it around the country?

Mr. WHITEHURST. The IES has a signature product called What Works Clearinghouse that examines research on what works, including issues such as high school completion and dropout prevention. And that evidence is widely used. It produces practice guides that combine evidence that provides suggestions to teachers or school administrators about how to put research into practice.

It's always a challenge to get knowledge into the field to have it utilized. There are weaker pressures to do this in education than in fields like health. And so there needs to be an active effort——I think a more active effort than we have now to get the information out, to see that it's available for people who want to use it.

It would be easier if IES were a business. You could be paying for ads and other things to get the message out. We have some constraints. But I think that is a challenge going forward and one that the agency needs to do a better job of.

Mr. THOMPSON. The gentleman's time has expired.

I'll take the liberty of the next 5 minutes.

Ms. Stickland, in your testimony you laid out some compelling reasons we should be concerned about limiting what personally identifiable information is collected by schools and States. But you also said you support accountability and research to determine what works in education.

Do you believe we can protect student privacy while also helping educators learn what works and what does not so our children can have the best education possible?

Ms. STICKLAND. Thank you for the question. I would suggest that, yes, parents do support research, again. But I think there needs to be some transparency and fair information practices around what schools and States are collecting and disclosing to others. I think the more that parents know and understand, the more they will trust. And trust is a huge issue when it comes to, you know, children being in a school system.

Mr. THOMPSON. Thank you.

Dr. Schwartz, you talked about the need for an emphasis on research and program evaluation within State departments of education. Do local school districts view this as a valuable role for the State departments? And, if so, what is the value to them? And, if not, what can States do to better help school districts understand and experience the benefit?

Mr. SCHWARTZ. Thank you. That's a really important question. And we view districts as our primary clients. And they are actually our——both our partners in getting the research done, but the primary source of demand for this research. So I think much of the demand for strong research comes from our districts. But school districts also face just a deluge of voices offering advice and direction. And if research isn't clearly applicable to their situation, they will quickly move on.

Too often, I think, even when State departments engage in high-quality research, what comes back feels overly narrow and very much tailored to a specific program that if you aren't running in your district, you have trouble figuring out how to use that research. And that's why these long-term partnerships that I mentioned are key. Ideally, though, it will allow you to focus on learning beyond a single study, just what Dr. Whitehurst was talking about, and create an engine for disseminating data and analysis in ways that speak directly to practitioners.

So we're hoping that with the Tennessee Education Research Alliance what we'll get is an organization that can take learning across the many studies that are happening in a single area in Tennessee and think about, what is that telling us about a State or district strategy, and how can practitioners at the school and district level use this to improve.

Mr. THOMPSON. Thank you.

Dr. Whitehurst, how important is it——I believe in——good public policy comes from being data driven, good research. How important is it to have transparency when an agency makes policy decisions or directions, to provide transparency to the research that is——that those conclusions are based upon?

Mr. WHITEHURST. It would be wonderful if that happened——

Mr. THOMPSON. It would be.

Mr. WHITEHURST.——wouldn't it? And it would be wonderful, when it happened, if there wasn't kind of manifest cherry-picking of evidence to support the decision. That's why I think the availability of an objective source for evidence that bears on public decision-making, that's free from political influence, is terrifically important. Because absent that kind of break, you find a lot of narrative and hand waving about using evidence, but it's more misused than it is used.

Mr. THOMPSON. Yeah. And I don't have a specific criticism within the realm of jurisdiction of this committee with education. But some of my other responsibilities, bumping up against other agencies who have refused to reveal the research that they've utilized to make their decisions, that's not helpful as a policymaker. And I don't think it's helpful for the community as a whole.

Dr. Whitehurst, you talked about the need to ensure IES has an independent administration budget. Are there other ways that Congress could strengthen the IES' independence?

Mr. WHITEHURST. Well, the current legislation is really quite good. It's viewed as a model by the other research and evaluation Federal agencies. They envy it. So I would say Congress has done a very good job there. And if I had specific recommendations for areas in which I thought the legislation was lacking, I would have given it to you.

So, really, it's the budget to do the work in terms of hiring staff and having an office to sit in that's still subject to political control in the one area where I think Congress could fix an important issue.

Mr. THOMPSON. In the few seconds I have left, are there other areas——you were recommending in a previous response to a question with the chairman, recommendations that you might have and

you weren't able to get through those, or anything additional you wanted to list at this point?

Mr. WHITEHURST. Well, I just wanted to make the point with regard to the sharing of data. And I think what we need is an investment at the State level so that they have the capacity to protect the privacy of their data. And we need to figure out——and we have the capacity but not the funding to do this——how to make data available to the research community that does not have personally identifiable elements.

So you can do the analysis to your heart's content, little Suzy's data are in there, but you can never figure out who little Suzy is. There's the capacity to do that. We just don't have that capacity at the State-level, uniformly, to make sure that data are shared in ways that don't have any threats with regard to individually identifiable data.

Mr. THOMPSON. Thank you. My time has expired.

Please recognize the gentleman from Colorado, Mr. Polis, for 5 minutes.

Mr. POLIS. Thank you.

First, we value accuracy on the committee. And I wanted to bring Ms. Stickland's attention to one of her comments that I believe to be inaccurate, and I want to give her the chance to either correct that or give our committee an example.

You cite that K-12 student data currently maintained by States in their SLDS contains upwards of 700 highly sensitive personal data elements. I'm certainly not going to dispute the overall number. It probably depends on how you define an element and the granularity, and a separate discussion. But among the examples you cite, including student disciplinary records, homelessness data, you include immigration status.

I wanted to give you the chance to either retract that, because it is illegal under the Plyler precedent to collect, no less include it in a State database, immigration. Or, if it is correct, if you could tell us what State is doing that so we can further investigate this violation of our law.

Ms. STICKLAND. Sure. Thank you for the question. For instance, in Colorado, there is a data field called migrant, yes or no.

Mr. POLIS. Okay. So that does not relate to immigration status. That would be for specific funding that comes through the migrant worker program. Their immigration, that is a separate——immigrants are not migrant workers. They're different.

Ms. STICKLAND. Oh, I think——I think the reference to that in my testimony——and I'm sorry that you find it inaccurate. I think the purpose of that is that whether it's a migrant——you know, if the data field says migrant, yes or no, that could——that information could be used in the future in ways that maybe it wasn't initially intended for the Federal reporting.

Mr. POLIS. Would you like us to perhaps change immigration status to migrant workers——migrant worker information?

Ms. STICKLAND. Migrant status would be fine.

Mr. POLIS. Okay.

Ms. STICKLAND. Thank you for the clarification.

Mr. POLIS. Okay. It's whether they are part of our——we have Federal funding that goes to our migrant programs. And these are

highly mobile students that tend to work seasonally in certain areas. It's a very small subset of immigrants, both documented and not, and it has nothing to do with their immigration status.

Ms. STICKLAND. Well, I understand that, sir.

Mr. POLIS. So I just wanted to clarify that. Thank you.

Ms. STICKLAND. But I just wanted to clarify that that's the reason why we're concerned about a data field such as that, is that it's intended now for a certain purpose. But that doesn't mean it will be limited to that purpose in the future. And that's the same with any other data field in a data system.

Mr. POLIS. Yes. But the immigration status is not collected, no less included in a database, so I just wanted to be clear, under the Plyler decision.

Ms. STICKLAND. Thank you.

Mr. POLIS. I want to go to Mr. Whitehurst. You said of the Strengthening Education Through Research Act, is your quote: I strongly support the bill as passed by the House and amended by the HELP committee. As you know, the bill ultimately failed both chambers, did not make it through.

In your expert opinion, as a leading educational researcher and former head of the Institute for Education and Science, should Congress maintain the bipartisan agreement in SETRA and move to pass the bill to strengthen the independence of IES, streamline administrative functions, and improve the relevant and usefulness of education research?

Mr. WHITEHURST. Yes.

Mr. POLIS. Thank you.

Dr. Schwartz, as we continue the conversation about data privacy, one of my concerns is that policies could create additional paperwork for districts, more work for districts and teachers. What I hear from educators in the classroom, that's the last thing we need. In my district, many teachers feel they're required to do more and more year after year.

There should be a baseline level of privacy that everybody has to comply with so schools have that privacy assurance as soon as they start using a product rather than put additional burden onto the educators. Of course, the other side is that districts and schools need to develop strong local data policies as well around both protection and privacy.

Can you talk about what Congress should do in a FERPA reauthorization to give States like Tennessee or Colorado the assistance they need to develop these policies?

Mr. SCHWARTZ. I think additional guidance for local-level policies around privacy would be enormously useful. Because I do think that there are areas of FERPA, specifically around things like the ways that data needs to be suppressed——the n-size comments that you made earlier get at some of this——but that are interpreted very, very differently jurisdiction to jurisdiction. And having some guidance on what that looks like and balancing——I think there always will be and is a balance, and some tension, between wanting data to be used for research purposes and understanding that security is at a premium and that we need schools and districts to do what they can to keep data safe.

Mr. POLIS. And the final question, Dr. Schanzenbach, we can talk about this endlessly, but in 30 seconds, can you talk about why the data is so important in determining how to allocate our limited dollars to have the optimal results? How can data better guide us having the best positive educational impact with the limited resources we have?

Ms. SCHANZENBACH. We need the research to tell us, you know, what works and what doesn't work, and, you know, redistribute to things that do work the things that don't.

Mr. POLIS. Thank you.

Yield back.

Mr. THOMPSON. The gentleman yields back.

I now recognize the gentlelady from Oregon, Ms. Bonamici, for 5 minutes.

Ms. BONAMICI. Thank you very much, Mr. Chairman. And thank you, Ranking Member Polis, for having this hearing. And thank you to all of the witnesses. This has been a very good and important conversation, and I'm glad there's agreement among all of us that we benefit from research and we also need privacy. So we're starting out with that agreement.

I want to thank Mr. Polis for clarifying the record on immigration status. As someone who's very concerned about the, perhaps, eroding trust, if we sent the message that was collected information. We have already a lot of students who are fearful and families who are concerned about increased efforts to enforce. And when we have families not participating in parent-student conferences, for example, and kids are afraid to go to school because they don't know if their parents will be there when they get home, we don't want to send that message. We want students to attend school and feel safe there and be safe there. And our Supreme Court has held that they're entitled to go to public education without regard to their status.

So schools and families in Oregon benefit from rigorous and relevant research that's supported by the Institute of Education Sciences and the State's longitudinal data system. My alma mater, University of Oregon, has used funding from IES to develop evidence-based reading interventions that are in practice in schools today and are improving student outcomes.

For example, Durham Elementary School in Tigard, they're making some great gains in reading by using these interventions. And that was made possible by data collected about students.

Beaverton School District, which is where my kids went to school, collects extensive data on discipline in schools. And it's partnered with the area's regional educational laboratory, which is also funded through IES, to compare data with other school systems and develop best practices. And they have seen a 40 percent drop in exclusionary discipline from doing that research and that work.

So, by all means, we must protect student data. But we also need to promote robust protections while furthering research that really helps with student success. And I think a good example of this balance can be found in Oregon's longitudinal data system. We use multiple layers of protection, including encryption, deidentify student data, all while supporting important research.

So, Dr. Schanzenbach, Oregon has dedicated extensive time and resources to develop that data system, and by gathering data that allowed the States to do the longitudinal analysis versus just year by year, Oregon's been able to support student achievement. We found that the year a student becomes proficient in English matters a great deal. Non-native speakers who achieve proficiency in English by the eighth grade graduate at a higher rate than native English speakers. And those who achieve proficiency by the ninth grade have graduation rates below average. So Oregon's been able to direct ELL funding and policy to support earlier interventions.

So can you speak of other examples of how State longitudinal data systems can support student achievement and also benefit professional development, assessment literacy, and data-driven decision making?

Ms. SCHANZENBACH. There are so many examples of this. I'll go into one, but I can answer, you know, more. I can talk about this all day, unfortunately.

So we have a partnership with Evanston Township High School, with Northwestern, that was funded by IES. And we have worked together with them to answer some research questions that they have that they just don't have the internal capacity to answer. So, for example, they were interested in trying to understand what would happen if they expanded access to advanced placement biology classes. So are those kids who are qualified to either take advanced placement or regular biology, are they better served by getting pushed into the AP class?

What we found for them was, yeah, the answer is yes. So let's challenge kids to take AP. They do better. They take more AP classes. There's just lots of spillover benefits. It doesn't hurt the kids who are already in the AP to have a couple of, you know, students who are sort of more on the margin. So that's an example.

Our graduate students at Northwestern got to answer that question. So it was really important for them to help learn, you know, how to do research and how to interact, you know, asking rigorous, relevant questions. I think that's just another example of really good research that helps kids.

Ms. BONAMICI. Terrific. Thank you.

And Oregon passed, a couple years ago, the Oregon Student Information Protection Act at the State level. It prevents ed-tech companies from selling student information and targeting advertising to students using specific information to send ads or creating a profile about a student unless it's for school purposes. They also require companies to have reasonable security measures in place, delete student information when the school asks them to delete it, and then clarifies where and when they can use student information.

So can you talk about the relative threat posed by the storage of information in a statewide data system versus that of the students' increasing use of technology in the classroom?

Ms. SCHANZENBACH. I can say, as a parent, I'm much more concerned about what my kid is doing on the internet than this secure data being made accessible to researchers.

Ms. BONAMICI. Thank you.

And I see my time has expired. I yield back. Thank you, Mr. Chairman.

Mr. THOMPSON. The gentlelady's time has expired.

I want to thank our witnesses for taking time to testify before the subcommittee today. Your time and your expertise is very much appreciated.

I now recognize Ranking Member Polis for any closing remarks that he may have.

Mr. POLIS. Are we doing a second round of questions or are we just doing closing remarks?

Okay. Let me see here.

Okay. Well, I want to thank all four of our witnesses for coming. From our discussion today, I think it's clear that supporting privacy is paramount to our work, along with supporting education data research. And that's an area I expect we'll have continued bipartisan support.

The Every Student Succeeds Act contains key civil rights provisions that will help ensure that every student receives a great education and that schools are held accountable for performance and school districts as well. And, of course, one of the key ways we know how schools are performing is we look at data.

We also need to know what programs are working and which ones are not, particularly as we look for wasteful spending so that we can cut that. Using reliable, de-identified, protected data is a key part of identifying what works and what doesn't work.

We've had some great testimony about experience using data to help improve our education system, the value smart data can provide. At the same time, our data privacy laws have to keep up with innovations in technology. And educational technology can and should and is and will be a force for good in closing the achievement gap and opening doors for personalized education. And, at the same time, we need smart privacy laws that parents and students and teachers can feel good about, protect their privacy, and can have confidence that companies or States or districts won't be using student data irresponsibly or failing to protect student data.

In a bipartisan fashion, I hope this committee continues its work with teachers, with parents, with privacy advocates, with educational technology companies, with school districts, with States to reauthorize FERPA and SETRA, and pass a new law to provide smart privacy guardrails for the increasingly important educational technologies that are already deployed in our schools and those that will be deployed.

I look forward to continuing this work on a bipartisan basis. This hearing is an excellent first step.

And I yield back the balance of my time.

Mr. THOMPSON. The gentleman yields back, and I thank him for his leadership.

I now recognize myself for closing comments.

You know, the Education Science Reform Act was created to update and improve efforts to support education research to improve schools, but the law may not be meeting, obviously, all of its goals. The 2013 Government Accountability Office report found several weaknesses in the law that have to be addressed, and that's why we reauthorize and a chance to make things right going forward.

Congress passed the Family Education Rights and Privacy Act in 1974, by my calculations, about 43 years ago, to protect student privacy. Quite frankly, most of our staff were not alive at that point, and a significant number of our colleagues were not alive at that point. It's time, it is certainly beyond time.

You know, the purpose of this hearing today was to learn from States, parents, stakeholders how they protect student privacy and utilize education research, including suggestions on how to reform the Education Science Reform Act and update the Family Educational Rights and Privacy Act. I think we've really——once again, I want to thank the panel that we had here today. You got us a great start on that journey. It is a journey, and we have a lot more work to do. But thank you for your contributions today. It's appreciated.

Without objection, there being no further business, the subcommittee stands adjourned.

[Additional submissions by Mr. Polis follow:]

U.S. Department of Justice
Civil Rights Division

U.S. Department of Education
Office for Civil Rights
Office of the General Counsel

May 8, 2014

Dear Colleague:

Under Federal law, State and local educational agencies (hereinafter "districts") are required to provide all children with equal access to public education at the elementary and secondary level. Recently, we have become aware of student enrollment practices that may chill or discourage the participation, or lead to the exclusion, of students based on their or their parents' or guardians' actual or perceived citizenship or immigration status. These practices contravene Federal law. Both the United States Department of Justice and the United States Department of Education (Departments) write to remind you of the Federal obligation to provide equal educational opportunities to all children residing within your district and to offer our assistance in ensuring that you comply with the law. We are writing to update the previous Dear Colleague Letter on this subject that was issued on May 6, 2011, and to respond to inquiries the Departments received about the May 6 Letter. This letter replaces the May 6 Letter.

The Departments enforce numerous statutes that prohibit discrimination, including Titles IV and VI of the Civil Rights Act of 1964. Title IV prohibits discrimination on the basis of race, color, or national origin, among other factors, by public elementary and secondary schools. 42 U.S.C. § 2000c-6. Title VI prohibits discrimination by recipients of Federal financial assistance on the basis of race, color, or national origin. 42 U.S.C. § 2000d. Title VI regulations, moreover, prohibit districts from unjustifiably utilizing criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of a program for individuals of a particular race, color, or national origin. *See* 28 C.F.R. § 42.104(b)(2) and 34 C.F.R. § 100.3(b)(2).

Additionally, the United States Supreme Court held in the case of *Plyler v. Doe*, 457 U.S. 202 (1982), that a State may not deny access to a basic public education to any child residing in the State, whether present in the United States legally or otherwise. Denying "innocent children" access to a public education, the Court explained, "imposes a lifetime hardship on a discrete class of children not accountable for their disabling status. . . . By denying these children a basic education, we deny

them the ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation." *Plyler*, 457 U.S. at 223. As *Plyler* makes clear, the undocumented or non-citizen status of a student (or his or her parent or guardian) is irrelevant to that student's entitlement to an elementary and secondary public education.

To comply with these Federal civil rights laws, as well as the mandates of the Supreme Court, you must ensure that you do not discriminate on the basis of race, color, or national origin, and that students are not barred from enrolling in public schools at the elementary and secondary level on the basis of their own citizenship or immigration status or that of their parents or guardians. Moreover, districts may not request information with the purpose or result of denying access to public schools on the basis of race, color, or national origin. To assist you in meeting these obligations, we provide below some examples of permissible enrollment practices, as well as examples of the types of information that may not be used as a basis for denying a student entrance to school.

In order to ensure that its educational services are enjoyed only by residents of the district, a district may require students or their parents to provide proof of residency within the district. *See, e.g., Martinez v. Bynum*, 461 U.S. 321, 328 (1983).[1] For example, a district may require copies of phone and water bills or lease agreements to establish residency. While a district may restrict attendance to district residents, inquiring into students' citizenship or immigration status, or that of their parents or guardians would not be relevant to establishing residency within the district. A district should review the list of documents that can be used to establish residency and ensure that any required documents would not unlawfully bar or discourage a student who is undocumented or whose parents are undocumented from enrolling in or attending school.

As with residency requirements, rules vary among States and districts as to what documents students may use to show they fall within State- or district-mandated minimum and maximum age requirements, and jurisdictions typically accept a variety of documents for this purpose. A school district may not bar a student from enrolling in its schools because he or she lacks a birth certificate or has records that indicate a foreign place of birth, such as a foreign birth certificate.

---

[1] Homeless children and youth often do not have the documents ordinarily required for school enrollment such as proof of residency or birth certificates. A school selected for a homeless child must immediately enroll the homeless child, even if the child or the child's parent or guardian is unable to produce the records normally required for enrollment. *See* 42 U.S.C. § 11432(g)(3)(C)(1).

Moreover, we recognize that districts have Federal obligations, and in some instances State obligations, to report certain data such as the race and ethnicity of their student population. While the Department of Education requires districts to collect and report such information, districts cannot use the acquired data to discriminate against students; nor should a parent's or guardian's refusal to respond to a request for this data lead to a denial of his or her child's enrollment.

Similarly, we are aware that many districts request a student's social security number at enrollment for use as a student identification number. A district may not deny enrollment to a student if he or she (or his or her parent or guardian) chooses not to provide a social security number. *See* 5 U.S.C. §552a (note).[2] If a district chooses to request a social security number, it shall inform the individual that the disclosure is voluntary, provide the statutory or other basis upon which it is seeking the number, and explain what uses will be made of it. *Id.* In all instances of information collection and review, it is essential that any request be uniformly applied to all students and not applied in a selective manner to specific groups of students.

As the Supreme Court noted in the landmark case of *Brown v. Board of Education*, 347 U.S. 483 (1954), "it is doubtful that any child may reasonably be expected to succeed in life if he [or she] is denied the opportunity of an education." *Id.* at 493. Both Departments are committed to vigorously enforcing the Federal civil rights laws outlined above and to providing any technical assistance that may be helpful to you so that all students are afforded equal educational opportunities. As immediate steps, you first may wish to review the documents your district requires for school enrollment to ensure that the requested documents do not have a chilling effect on a student's enrollment in school. Second, in the process of assessing your compliance with the law, you might review State and district level enrollment data. Precipitous drops in the enrollment of any group of students in a district or school may signal that there are barriers to their attendance that you should further investigate.

We are also attaching frequently asked questions and answers and a fact sheet that should be helpful to you. Please contact us if you have additional questions or if we can provide you with assistance in ensuring that your programs comply with Federal law. You may contact the Department of Justice, Civil Rights Division, Educational Opportunities Section, at (877) 292-3804 or education@usdoj.gov, the Department of Education Office for Civil Rights (OCR) at (800) 421-3481 or ocr@ed.gov or the Department of Education Office of the General Counsel at (202) 401-6000. You may also visit http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm for the OCR enforcement office that serves

[2] Federal law provides for certain limited exceptions to this requirement. *See* Pub. L. No. 93-579, § 7(a)(2).

your area. For general information about equal access to public education, please visit our websites at http://www.justice.gov/crt/edo and http://www2.ed.gov/ocr/index.html.

We look forward to working with you. Thank you for your attention to this matter and for taking the necessary steps to ensure that no child is denied a public education.

Sincerely,

/s/

Catherine E. Lhamon
Assistant Secretary
Office for Civil Rights
U.S. Department of Education

/s/

Philip H. Rosenfelt
Deputy General Counsel
Delegated the Authority to
Perform the Functions and
Duties of the General Counsel
U.S. Department of Education

/s/

Jocelyn Samuels
Acting Assistant Attorney General
Civil Rights Division
U.S. Department of Justice

Attachments

Early Childhood, Elementary, and Secondary Education Subcommittee
House Committee on Education and the Workforce
"Exploring Opportunities to Strengthen Education Research While Protecting Student Privacy"
Wednesday, June 28, 2017

SUBMISSION FOR THE RECORD
From Representatives:
Jared Polis
Raúl M. Grijalva
Marcia L. Fudge
Suzanne Bonamici
Susan A. Davis
Frederica S. Wilson
Robert C. "Bobby" Scott

At the hearing before the Subcommittee on Early Childhood, Elementary, and Secondary Education, one witness, Ms. Rachael Stickland, in both her written and spoken testimony, made an incorrect assumption that resulted in an unintentionally false statement. Ms. Stickland testified that information contained in a State's longitudinal data system (SLDS) contains "upwards of 700 highly sensitive personal data elements, including students' disciplinary records, disabilities, immigration status, and homelessness data."

The inclusion of "immigration status" makes this statement factually incorrect. The Supreme Court, in *Plyler v. Doe*, held that states cannot constitutionally deny students a free public education because of their immigration status. In subsequent years, federal courts, relying on the *Plyler* precedent, have ruled against districts whose policies include requiring parents to disclose a child's immigration status upon enrollment (*Hispanic Interest Coalition of Alabama v. Governor of Alabama; League of United Latin American Citizens v. Wilson)*. The 11th Circuit Court of Appeals in *Hispanic Interest Coalition v. Alabama* specifically said a state is NOT allowed to ask for a student's immigration status as it creates a "chilling effect" that dissuades families from accessing public education, which is a violation of the precedent set by *Plyler* and Title VI of the Civil Rights Act of 1964.

The Department of Justice and The Department of Education issued joint guidance, which we have submitted for the record, following up on the 11th Circuit decision. The guidance states that a district cannot ask for the immigration or citizenship status of a student and that doing so is a violation of Title VI of the Civil Rights Act of 1964 and the regulations governing that title, which prohibit districts from using methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, or national origin.

When Ranking Member of the Subcommittee, Representative Jared Polis, asked Ms. Stickland to clarify her remarks, she mentioned that the State of Colorado records whether a student is migrant or non-migrant as an example of why she included "immigration status" in her written and oral testimony. This statement incorrectly implies a connection between a student's immigration status and migrant status.

Democratic members of the Subcommittee are writing to clarify further Ms. Stickland's misstatement. A student's migrant status is unrelated and irrelevant to a student's immigration status. A migrant student may or may not be a citizen of the United States in the same way a non-migrant student may or may not be a citizen of the United States. Based on law and fact, the witness' statement is incorrect and the witness conflating these two distinct terms reinforces current misunderstandings and stereotypes about the US migrant population. Furthermore, states wishing to receive federal funding to support the education of migrant students through implementation of the Migrant Education Program (MEP), (Title I-C of the Elementary and Secondary Education Act), are required to count such students and report such count to the federal government, as MEP funds are distributed via formula based on the State's population of migrant students. Therefore, it is a reasonable expectation that an SLDS or state administrative data set would include such information.

Ms. Stickland followed the exchange with Representative Polis by saying that she would be willing to change her remarks to mention "migrant status" instead of "immigration status," which we request the record reflect.

Due to the inflammatory national dialogue concerning issues of immigration and recent enforcement actions of this Administration, too many students and parents are already fearful of public schools. Despite the current climate, the *Plyler* precedent is clear: all children, regardless of immigration status, are welcome to learn and thrive in public school. To that end, Committee Democrats are submitting this statement to ensure that the testimony regarding collected data is correct. We do not want to foment false fear about the student information states do and do not collect.

Committee Democrats stand firm in our belief that education data and research is influential in helping states, districts, teachers, and parents make the transformational changes necessary to ensure a quality, public education for every student. Furthermore, Committee Democrats believe that data can be collected and used to improve teaching and learning while simultaneously protecting the rights and privacy of students and families.

U.S. Department of Justice
Civil Rights Division

U.S. Department of Education
Office for Civil Rights
Office of the General Counsel

Information on the Rights of All Children to Enroll in School:
Questions and Answers for States, School Districts and Parents

These Questions and Answers are intended to assist states and school districts in meeting their legal obligations to ensure that their enrollment[1] policies and practices at the elementary and secondary school levels do not discriminate on the basis of race, color, or national origin, and do not bar or discourage students' enrollment in elementary and secondary school based on their or their parents' actual or perceived immigration status. The U.S. Departments of Education and Justice encourage states and districts to proactively implement supportive enrollment policies and practices that create a welcoming and inclusive environment for all students.[2]

Documentation

Q - 1. Should a district inquire into the immigration or citizenship status of a student or parent[3] as a means of establishing the student's residency in the district?

A - 1. No. Immigration or citizenship status is not relevant to establishing residency in the district, and inquiring about it in the context of establishing residency is unnecessary and may have a chilling or a discouraging effect on student enrollment.

Q - 2. Are students, except homeless students as provided by Federal statute, required to show current residency in a district in order to enroll in a district school?

A - 2. A state or district may establish bona fide residency requirements and thus might require that all prospective students, except homeless students as defined and provided by the Federal McKinney-Vento Homeless Assistance Act, 42 U.S.C. §§ 11301 *et seq.*, furnish proof of residency within the district.

---

[1] For purposes of this guidance, the term "enrollment" also means registration, matriculation, or attendance in school.

[2] This Questions and Answers document accompanied the Dear Colleague letter on the Rights of All Children to Enroll in School, issued by the U.S. Departments of Education and Justice on May 6, 2011. This document has been updated to respond to additional questions received since the Dear Colleague letter was issued in 2011.

[3] For purposes of this guidance, the term "parent" also means guardian or other responsible person under state or local law.

Q - 3. How can students meet requirements to show current residency in a school district?

A - 3. Rules vary among states and districts on what forms of documentation can be used to prove residency within a district. Districts typically accept a variety of documents as proof of residency, such as a telephone or utility bill, mortgage or lease document, parent affidavit, rent payment receipts, a copy of a money order made for payment of rent, or a letter from a parent's employer that is written on company letterhead.

A parent must be permitted to establish residency using any of the alternative methods provided for by state or local law. States and districts cannot apply different rules, or apply the same rules differently, to children based on their or their parents' actual or perceived race, color, national origin, citizenship, immigration status, or other impermissible factor. All students must be treated equally.[4]

A district should review the list of documents that can be used to establish residency to ensure that any required documents would not unlawfully bar or discourage a student who is undocumented or whose parents are undocumented from enrolling in or attending school.

For example, while a district may choose to include a parent's state-issued identification or driver's license among the documents that can be used to establish residency, a school district may not require such documentation to establish residency or for other purposes where such a requirement would unlawfully bar a student whose parents are undocumented from enrolling in school.

Q - 4. Can a homeless child, including an undocumented homeless child, ever be required to show residency in a district in order to enroll in a district school?

A - 4. No. Even where a district has valid proof of residency requirements, it must exempt from those requirements all children and youth who are considered homeless under the Federal McKinney-Vento Homeless Assistance Act. These children and youth have a right to enroll in school, even if their families cannot produce the documents that would otherwise be required to prove residency.

The McKinney-Vento Act defines the term "homeless children and youth" as including, in part, "children and youths who are sharing the housing of other persons due to loss of housing,

[4] Title IV of the Civil Rights Act of 1964, which is enforced by the Department of Justice, prohibits school districts from taking actions that deprive students of equal protection of the laws. Title VI of the Civil Rights Act of 1964, which is enforced by the Department of Education, and by the Department of Justice upon referral from a Federal funding agency or through intervention in an existing lawsuit, prohibits discrimination on the basis of race, color, or national origin.

economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement," as well as children of migratory agricultural workers. Additional information regarding the McKinney-Vento Homeless Assistance Act is available at www.ed.gov/programs/homeless/guidance.pdf.

Q - 5. How can students show they meet a school's age requirements?

A - 5. As with residency requirements, rules vary among states and districts as to what documents students may use to show they fall within state- or district-mandated minimum and maximum age requirements, and jurisdictions typically accept a variety of documents for this purpose. Depending on the state or district, alternative documents could include, but are not limited to: a religious, hospital, or physician's certificate showing date of birth; an entry in a family bible; an adoption record; an affidavit from a parent; a birth certificate; previously verified school records; or any other documents permitted by law. School districts should make parents aware of any alternatives that exist as part of their efforts to ensure a welcoming and inclusive environment for all students.

Requests for documents such as birth certificates must not unlawfully bar or discourage a prospective student from enrolling and attending school, including a student who is undocumented or has parents who are undocumented, or a child or youth who is homeless as defined by the McKinney-Vento Homeless Assistance Act (see Q-4, above). A school district may not bar or discourage a student from attending school because the student lacks a birth certificate or has records that indicate a foreign place of birth, such as a foreign birth certificate. Requests for documentation also may not discriminate, or have the effect of discriminating, on the basis of race, color, or national origin. All students must be treated equally in the enrollment process.

A district, moreover, should not use a student's birth certificate or other documentation provided by a parent as a basis for inquiring into the immigration status of the student, his or her parents, or other family members. Such requests would likely have a discouraging effect on the enrollment of a student on the basis of immigration status.

Q - 6. What if a parent is reluctant to provide a copy of his or her child's foreign birth certificate, fearing that doing so would lead to questions about the child's or the parent's immigration or citizenship status?

A - 6. School districts are encouraged to take proactive steps to educate parents about their children's rights and to reassure them that their children are welcome in district schools. For example, state laws typically permit a district to use a variety of documents to establish the age of

a child. A district should publicize that it will use a foreign birth certificate, baptismal record, or alternative document in the same manner that it will use a United States birth certificate, baptismal record, or alternative document: that is, solely to establish the age of a child.

As previously emphasized, a district must apply its rules and standards for documentation of age or residency in the same way to everyone, regardless of race, color, national origin, citizenship, or immigration status. A foreign-born child who is unable or unwilling to furnish a birth certificate should have the same options to enroll in school and should be treated no differently than a United States citizen child who does not have or otherwise may not be able to produce a birth certificate.

Q - 7. In light of the Dear Colleague letter, should districts refrain from asking for students' social security numbers?

A - 7. The Federal government does not prohibit states or districts from collecting the social security numbers of prospective or current students. States and local school districts must decide, however, whether they have a legally permissible reason to collect this information. If they choose to collect social security numbers, they should take steps to ensure the confidentiality of the social security numbers and that they are stored securely. In addition, they must follow Federal laws regulating the use of that information. For example, under governing Federal laws, if a district requests social security numbers, it must inform individuals that the disclosure is voluntary, and must explain both the statutory or other basis for seeking the numbers and how the district intends to use the numbers. *See* Privacy Act of 1974, Pub. L. No. 93-579, § 7, 5 U.S.C. § 552a (note), available at http://www.ssa.gov/OP_Home/comp2/F093-579.html.

As the Dear Colleague letter makes clear, a district cannot deny enrollment to a student if he or she (or his or her parent) chooses not to provide the student's social security number.[5] Districts have alternatives to requesting social security numbers. For example, a district seeking to have student identification numbers could decide to assign a randomly selected number to each student. In this way, the state or district would avoid any chilling effect that a request for social security numbers may have on the enrollment of students because of their race, color, national origin, citizenship, or immigration status.

A school district that opts to request social security numbers should make clear in all enrollment and registration documents, including forms, websites, and communications with parents, that the provision of the child's social security number is voluntary, and that choosing not to provide a social security number will not bar a child's enrollment.

[5] Similarly, a school district cannot deny a student enrollment if his or her parent chooses not to provide his or her own social security number.

Q - 8. How can a school district distinguish between (a) information that it should or must collect, and (b) information that it may not collect because doing so may discourage enrollment or attendance?

A - 8. There is typically only minimal information that a district is required to collect under state law for a student to be able to enroll, such as proof of age, immunization history, and residency within the district. Both the state and the district must act in compliance with the U.S. Constitution and valid Federal or state laws, including their obligations not to discriminate, or implement policies that have the effect of discriminating, on the basis of race, color, or national origin. In doing so, states and districts should also assess their current policies to determine whether they are doing anything that may have the effect, albeit unintended, of discouraging the enrollment of undocumented children, such as asking for immigration papers or social security numbers, or requiring a driver's license or state-issued identification from a parent. Such practices and policies, once identified, should be changed to eliminate any possible chilling effect on enrollment.

Q - 9. In order to avoid discouraging enrollment, should a school district enroll any child who comes its way and ask for documentation later, after the child is enrolled?

A - 9. As noted above, school districts might require that prospective students furnish proof of residency in a district and/or age prior to enrollment, except for any children and youth who are considered homeless under the Federal McKinney-Vento Homeless Assistance Act. However, districts may also choose to wait until students are already enrolled before asking for any additional documentation that may be required under state or Federal law, such as student demographic data. By choosing to wait to collect additional information, districts may create a more welcoming and inclusive atmosphere for all prospective students. Requests for documentation must not discriminate, or have the effect of discriminating, on the basis of race, color, national origin, citizenship, or immigration status.

Q - 10. Once in possession of personal information about a student, are there circumstances when a school district may disclose that information from a student's education records without the consent of the student or a parent?

A - 10. There are circumstances when a school district may disclose information from a student's education records, *but these are limited and unlikely to be applicable in the majority of situations school districts confront*. The Family Educational Rights and Privacy Act of 1974 (FERPA) generally prohibits school districts that receive Federal funds from the Department of Education from disclosing information from a student's education records that alone or in combination with other information can identify that student, without the prior written consent of a parent or the student (if that student is 18 years of age or older or attends a postsecondary institution). *See* 20 U.S.C.

§1232g. There are some limited exceptions in FERPA to the requirement that written consent must be obtained before disclosing personally identifiable information from students' education records, *see* 34 C.F.R. § 99.31, as well as narrow, enumerated circumstances under which Federal immigration laws require or permit a school district to provide specific information about a student to another Federal, state, or local government entity. One such circumstance is where the issuance of a non-immigrant visa to a student—and the maintenance of that student's non-immigrant status—is conditioned on the student's attendance at a specific school. Note that in that case, a school district would have preexisting information about the student that he or she would have presented to the school in order to obtain the underlying visa, and so the school would not have any reason to initiate a request for information about immigration status.

Q - 11. How should a school district communicate the requirements for enrollment with parents who have limited proficiency in English?

A – 11. For limited English proficient parents of a student seeking to enroll in a school, a district must meaningfully communicate material information about enrollment – *e.g.*, translate a document into languages other than English and have some method of responding to those parents' questions – as required by Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and the Equal Educational Opportunities Act, 20 U.S.C. § 1703. Material information could include alternative means to establish state-permitted residency and age requirements, if any. If a district asks for a social security number, material information would also be the fact that a district cannot deny enrollment to a student if he or she (or his or her parent or guardian) chooses not to provide a social security number.

Additional Proactive Support Measures That States and Districts Can Take

Q - 12. What can schools do proactively to show parents that their children are welcome, regardless of their immigration or citizenship status?

A - 12. The Dear Colleague letter encourages states and districts to review enrollment policies and practices carefully to make sure they are consistent with the law and do not have a chilling effect on the willingness of parents to enroll their children. Any problems should be corrected.

In addition, the U.S. Departments of Education and Justice encourage districts to be proactive in notifying parents of their rights to send their children to public school. For example, districts can conduct outreach to communities to inform parents that all students who are residents in the district are welcome to attend the district's schools.

Q - 13. Should districts provide staff training on how to avoid violating the law in this area?

A - 13. Staff training at the school and district level is encouraged. Ultimately, the state and district have the legal responsibility to ensure that they are complying with Federal law. Staff training helps facilitate that compliance.

Q - 14. What is the role of State Educational Agencies (SEAs) in ensuring that students are not improperly excluded from school?

A - 14. The Dear Colleague letter issued May 6, 2011, and revised and reissued on May 8, 2014, is intended to remind both districts and states of their obligations under existing law. As recipients of Federal funds, SEAs are responsible for monitoring compliance with Federal anti-discrimination laws. Because laws regarding school enrollment, including requirements for proof of age and residency, vary from state to state, this is an area in which leadership from SEAs is needed and can be particularly effective. SEAs are encouraged to review existing practices and policies and to assist their districts in understanding the types of practices that will comply with state requirements regarding school enrollment without violating constitutional and Federal anti-discrimination requirements. Specifically, SEAs should work to ensure that their school districts' enrollment practices do not unlawfully discourage or bar students, including students who are undocumented or have parents who are undocumented, from school.

[Additional submission by Chairman Rokita follow:]

epic.org

Electronic Privacy Information Center
1718 Connecticut Avenue NW, Suite 200
Washington, DC 20009, USA

+1 202 483 1140
+1 202 483 1248
@EPICPrivacy
https://epic.org

June 27, 2017

The Honorable Todd Rokita, Chairman
The Honorable Jared Polis, Ranking Member
House Committee on Education and the Workforce
Subcommittee on Early Childhood, Elementary, and Secondary Education
2176 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Rokita and Ranking Member Polis:

We write to you regarding the upcoming hearing on "Exploring Opportunities to Strengthen Education Research While Protecting Student Privacy."[1] We appreciate the Committee's interest in addressing an issue of paramount concern to American parents and students.

EPIC is a public-interest research center established in 1994 to focus public attention on emerging privacy and civil liberties issues. EPIC is a leading advocate for student privacy rights.[2] EPIC has proposed a Student Privacy Bill of Rights to safeguard student data and security,[3] obtained documents regarding the misuse of education records through the Freedom of Information Act, and repeatedly urged the Federal Trade Commission to establish security

---

[1] *Exploring Opportunities to Strengthen Education Research While Protecting Student Privacy*, 115th Cong. (2017), H. Comm. on Education and the Workforce, Subcomm. on Early Childhood, Elementary, and Secondary Education, https://edworkforce.house.gov/calendar/eventsingle.aspx?EventID=401779 (June 28, 2017).

[2] See, e.g., *Student Privacy*, EPIC, http://epic.org/privacy/student/; Letter from EPIC et al. to Secretary John B. King, U.S. Department of Education (June 6, 2016), https://epic.org/privacy/student/ED-Data-Security-Petition.pdf; Comments of EPIC to the Institute of Education Sciences and Department of Education, Privacy Act of 1974; System of Records—"Impact Evaluation of Data-Driven Instruction Professional Development for Teachers", Jan. 4, 2016, *available at* https://epic.org/privacy/student/EPIC-Comments-ED-Impact-Eval-SORN.pdf; Comments of EPIC to the Department of Education, Notice of New System of Records: "Study of Promising Features of Teacher Preparation Programs", Jul. 30, 2012, *available at* https://epic.org/privacy/student/EPIC-ED-SORN-Cmts.pdf; Comments of EPIC to the Department of Education, Family Educational Rights and Privacy Act Notice of Proposed Rulemaking, May 2, 2011, *available at* http://epic.org/privacy/student/EPIC_FERPA_Comments.pdf; The Privacy Coalition to Donald Rumsfeld, Secretary of Defense, DOD Database Campaign Coalition Letter (Oct. 18, 2005), *available at* http://privacycoalition.org/nododdatabase/letter.html; Br. *Amicus Curiae* Electronic Privacy Information Center Supp. Apl., *Chicago Tribune Co. v. Bd. of Trustees of Univ. of Illinois*, 680 F.3d 1001 (7th Cir. 2012) (No 11-2066), *available at* http://epic.org/amicus/tribune/EPIC_brief_Chi_Trib_final.pdf.

[3] EPIC, *Student Privacy Bill of Rights*, https://epic.org/privacy/student/bill-of-rights.html.

Defend Privacy. Support EPIC.

standards for student data maintained by state agencies.[4] EPIC also sued the Department of Education regarding changes in an agency regulation that diminished the safeguards set out in the Family Educational Rights and Privacy Act.[5] The practical consequence of the FERPA rule change was to make it easier for private parties to get access to sensitive student data.

The Department of Education has recognized that data security is an "essential part of complying with FERPA as violations of the law can occur due to weak or nonexistent data security protocols."[6] Yet, the Department "does not believe it is appropriate to regulate specific data security requirements under FERPA."[7] As a consequence, student data is routinely compromised "due to weak or nonexistent data security protocols."[8]

Here are a few examples[9] of weak or nonexistent data security protocols have led to the disclosure of education records in violation of FERPA:

- A University of Maryland database containing 287,580 student, faculty, staff, and personnel records was breached in 2014; the "breached records included name, Social Security number, date of birth, and University identification number." The records go as far back as 1992.[10]
- In 2015, computer criminals hacked the University of Berkeley's Financial System and gained access to Social Security numbers and bank account information for approximately 80,000 students, vendors, staff, and current and former faculty. By some estimates, the breach impacted "approximately 50 percent of current students and 65 percent of active employees."[11]
- D.C. Public Schools recently posted education records of approximately 12,000 public school special needs students online. The information included "each student's identification number, race, age, school, disabilities and any services he or she receives."[12] The information was uploaded to a public D.C. Council Dropbox account.

---

[4] EPIC, *EPIC Uncovers Complaints from Education Department about Misuse of Education Records* (July 18, 2014), https://epic.org/2014/07/epic-uncovers-complaints-from.html.
[5] *EPIC v. U.S. Dep't of Educ.*, 48 F.Supp. 1 (D.D.C 2014).
[6] Family Educational Rights and Privacy Act Final Reg., 76 Fed. Reg. 75,604, 75,622 (Dec. 2, 2011).
[7] *Id.*
[8] *Id.*
[9] *See, e.g., Chronology of Data Breaches: Security Breaches 2005 – Present,* PRIVACY RIGHTS CLEARINGHOUSE, http://www.privacyrights.org/data-breach (Select "EDU-Education Institutions); Benjamin Herold, *Danger Posed by Student-Data Breaches Prompts Action,* EDUCATION WEEK (Jan. 22, 2014), http://www.edweek.org/ew/articles/2014/01/22/18dataharm_ep.h33.html; Michael Alison Chandler, *Loudoun Schools Offer Details on Data Breach*, WASHINGTON POST (Jan. 8, 2014), http://www.washingtonpost.com/local/education/loudoun-schools-offer-details-on-data-breach/2014/01/08/d0163b50-78ad-11e3-8963-b4b654bcc9b2_story.html.
[10] UMD Data Breach, UNIVERSITY OF MARYLAND, http://www.umd.edu/datasecurity/.
[11] Janet Gilmore, *Campus Alerting 80,000 Individuals to Cyberattack*, BERKELEY NEWS (Feb. 26, 2016), http://news.berkeley.edu/2016/02/26/campus-alerting-80000-individuals-to-cyberattack/
[12] Perry Stein, *D.C. Accidentally Uploads Private Data of 12,000 Students*, WASHINGTON POST (Feb. 11, 2016), https://www.washingtonpost.com/local/education/dc-accidentally-uploads-private-information-of-12000-students/2016/02/11/7618c698-d0ff-11e5-abc9-ea152f0b9561_story.html.

This is at least the second time since 2015 that D.C. Public Schools have publicly posted the private education records of students with special needs.[13]

- Edmodo, the self-described "number one K-12 social learning network in the world" boasting "over 39 million teachers, students, and parents," previously collected student information over an unencrypted connection.[14]
- And, in one of the largest documented school data breaches, the Maricopa County Community College District ("MCCD") experienced a security breach affecting almost 2.5 million students, alumni, vendors and employees.[15] The breach exposed personal information including "names, birth dates, Social Security numbers, and bank account information [.]"[16] This breach followed an earlier 2011 MCCD breach.[17]

The enactment of the Student Privacy Bill of Rights[18] should be a priority for this Congress. The Student Privacy Bill of Rights would provide students with the following rights:

1. **Access and Amendment:** Students have the right to access and amend their erroneous, misleading, or otherwise inappropriate records, regardless of who collects or maintains the information.
2. **Focused collection:** Students have the right to reasonably limit student data that companies and schools collect and retain.
3. **Respect for Context:** Students have the right to expect that companies and schools will collect, use, and disclose student information solely in ways that are compatible with the context in which students provide data.
4. **Security:** Students have the right to secure and responsible data practices.

---

[13] John Templon and Katie J.M. Baker, *D.C. Public Schools Website Exposed Confidential Info About Students With Disabilities*, BUZZFEED (Feb. 3, 2015, 1:02 PM), http://www.buzzfeed.com/johntemplon/dc-public-schools-website-exposed-confidential-info.
[14] Natasha Singer, *Data Security Is a Classroom Worry, Too*, N.Y. TIMES, June 22, 2013, at BU1, *available at* http://www.nytimes.com/2013/06/23/business/data-security-is-a-classroom-worry-too.html.
[15] *Maricopa Community Colleges Notifies 2.5M After Data Security Breach*, PHOENIX BUSINESS JOURNAL (Nov 27, 2013, 11:58 AM MST), http://www.bizjournals.com/phoenix/news/2013/11/27/mcccd-notifies-25m-about-exposed.html?page=all.
[16] *Id.*
[17] Mary Beth Faller, *Failure to Address 2011 Hacking Tied to '13 Breach*, THE ARIZONA REPUBLIC (Feb. 2014, 10:36 AM), http://www.azcentral.com/community/phoenix/articles/20140318arizona-mcccd-failure-address-hacking-tied-breach.html. *See also* EPIC, *In the Matter of Maricopa County Community College District* (Sept. 29, 2014), https://epic.org/privacy/student/EPIC-Safeguards-Rule-Complaint.pdf.
[18] In 2015, President Obama rightly proposed legislation to safeguard student privacy. The Student Digital Privacy Act would have "prevent[ed] companies from selling student data to third parties for purposes unrelated to the educational mission and from engaging in targeted advertising to students based on data collected in school." Press Release, White House Office of the Press Secretary, Fact Sheet: Safeguarding American Consumers & Families (Jan. 12, 2015), http://www.whitehouse.gov/the-press-office/2015/01/12/fact-sheet-safeguarding-american-consumers-families.

5. **Transparency:** Students have the right to clear and accessible information privacy and security practices.
6. **Accountability:** Students should have the right to hold schools and private companies handling student data accountable for adhering to the Student Privacy Bill of Rights.

As school districts and companies that market services and products to students increasingly collect and use student data, the ability for students to have access to and control of that data will be increasingly important. Also important is the use of Privacy Enhancing Techniques (PETs) that minimize or eliminate the collection of personal information. [19]

Conclusion

Students today face unprecedented threats to their personal privacy. New technology is routinely deployed in classrooms without meaningful accountability. Student communications, interests, location, and learning experiences are routinely logged, compiled, and analyzed. Personal data flows from schools to consultants and private corporations. Schools simply fail to safeguard the student data they collect. We urge you to enact a Student Privacy Bill of Rights to safeguard student data.

We ask that this statement be entered in the hearing record.

EPIC looks forward to working with the Committee on these issues of vital importance to the American public.

Sincerely,

/s/ Marc Rotenberg
Marc Rotenberg
EPIC President

/s/ Caitriona Fitzgerald
Caitriona Fitzgerald
EPIC Policy Director

[19] *See* Comments of EPIC, *On the Privacy and Security Implications of the Internet of Things*, FTC File No. ___ (June 1, 2013), https://epic.org/privacy/ftc/EPIC-FTC-IoT-Cmts.pdf.

[Additional submission by Ms. Stickland follows:]

July 11, 2017

Committee on Education and the Workforce
Subcommittee on Early Childhood, Elementary and Secondary Education
U.S. House of Representatives
2176 Rayburn House Office Building
Washington, DC 20515

Dear Distinguished Members of the Subcommittee on Early Childhood, Elementary and Secondary Education:

Thank you again for the opportunity to testify before your Subcommittee on Wednesday, June 28, 2017, regarding parental concerns over the collection and use of personal student information for research and other purposes. I wanted to take this opportunity to expand on how immigration data may be included in Statewide Longitudinal Data Systems (SLDS), as mentioned in my testimony,[1] and provide additional information on the troubling absence of any federal security standards for SLDS, which may make them vulnerable to breaches or hacking.

First, it is important to note that the United States Supreme Court decision mentioned during the hearing, *Plyler v. Doe*,[2] appears to apply only to students in K-12, and mandates the right of all such students, no matter what their documentation, to attend U.S. public schools. Yet the *Plyler v. Doe* guidance provided by the U.S. Department of Education (Department)[3] does not explicitly prohibit schools from collecting information about a student's immigration status, as was referenced several times during the June 28th hearing.

Instead, the guidance describes how State and local educational agencies must not bar students "...from enrolling in public schools at the elementary and secondary level on the basis of their own citizenship or immigration status or that of their parents or guardians." The letter continues, "Moreover, districts *may not request information with the purpose or result* [emphasis added]of denying access to public schools on the basis of race, color, or national origin."

While the guidance is clear that the *Plyler* decision prohibits immigration status from being used to bar students from enrolling in public schools, the letter does not state that it is unlawful to request or collect their immigration status for other purposes.[4] In addition, many SLDS are not limited to K-12 education

---

[1] *See* Rachael Stickland's testimony before the Subcommittee on Early Childhood, Elementary, Secondary Education, June 28, 2017, https://edworkforce.house.gov/uploadedfiles/rachael_stickland_written_testimony_-_final.pdf

[2] *Plyler v. Doe*, 457 U.S. 202 (1982)

[3] *See* the U.S. Department of Education's Dear Colleague Letter: School Enrollment Procedures, May 8, 2014, https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405.pdf

[4] The U.S. Department of Justice and U.S. Department of Education also issued a joint document entitled "Information on the Rights of All Children to Enroll in School: Questions and Answers for States, School Districts and Parents," which merely recommends that districts "should" (but not shall) alter any practices or policies that might dissuade a child from enrolling based on immigration information obtained by the school, including asking

data, but may connect, link or incorporate data from multiple agencies and institutions, including, but not limited to, K-12, higher education, career and technical colleges, health and human services, labor and workforce, public safety, corrections, etc.[5]

For example, the Washington State Department of Education partners with at least eleven agencies and organizations to obtain data for their SLDS, known as ERDC (Education Research and Data Center).[6] One partner, the State Board for Community and Technical Colleges (or SBCTC), "incorporates" student enrollment and completion data[7] into the ERDC, including a specific data element called "citizenship status," which "indicates whether a student is a U.S. citizen, immigrant, refugee or living in the country on a visa."[8]

Moreover, many states collect other forms of immigration data from K-12 students. The Tennessee Department of Education includes a data element called "Immigrant Student" in its database,[9] with the following description: "Identification of a student that immigrated to the United States." Complementary data elements in the system include "First Date Enrolled in a US School," and "Native Language."

New York also includes immigration data in its state data system called the State School Information Repository System (SIRS).[10] According to the SIRS data reporting manual, school districts are directed to report whether a student is an "immigrant," as defined as individuals who: "a) are aged 3 through 21; b) were not born in any State; and c) have not been attending one or more schools in any one or more States for more than 3 full academic years."[11]

New York as well as many other states also collect data on the student's country of origin/birth and "migrant" status. Though these data points do not directly identify a student's documentation status, they could easily be used as a screening device if the government wanted to employ them for this purpose.

---

for "immigration papers." Specifically, answer 8 of the document states: "...states and districts *should* [emphasis added] also assess their current policies to determine whether they are doing anything that may have the effect, albeit unintended, of discouraging the enrollment of undocumented children, such as asking for immigration papers or social security numbers, or requiring a driver's license or state-issued identification from a parent. Such practices and policies, once identified, *should be changed* [emphasis added] to eliminate any possible chilling effect on enrollment." https://www2.ed.gov/about/offices/list/ocr/docs/qa-201405.pdf

[5] *See* the Institute for Education Sciences' SLDS Issue Brief, March 2013, https://nces.ed.gov/programs/slds/pdf/centralized_warehouse.pdf

[6] For a list of all eleven partners, *see* http://www.erdc.wa.gov/research-partners/our-partners

[7] *See* the ERDC data inventory file showing that CTC "Student" enrollment and "Completions" data are "incorporated" into the ERDC, http://www.erdc.wa.gov/sites/default/files/ERDC-Data-Inventory-24-Aug-2016.pdf

[8] The "Student" and "Completions" data dictionary files on the SBCTC website include the "citizenship status" data element labeled as "CITZ_STAT" and defined as "A two-character code that indicates whether a student is a U.S. citizen, immigrant, refugee or living in the country on a visa. This is a required data element for State or Contract funding." *See* https://www.sbctc.edu/colleges-staff/data-services/data-warehouse-documentation.aspx

[9] *See* student immigration data collected by the Tennessee Department of Education in the Student Data Inventory document, pg. 14, https://www.tn.gov/assets/entities/education/attachments/data_Student_Data_Inventory_November_2014.pdf

[10] *See* the New York State's Education Department's SIRS website, http://www.p12.nysed.gov/irs/sirs/

[11] *See* the New York State School Information Repository System (SIRS) Manual, pg.292 for the full definition of "immigrant," http://www.p12.nysed.gov/irs/sirs/documents/2016-17SIRSManual12-8.pdf

Indeed, many immigrant families are rightfully concerned because many states collect data which could be used as a proxy for their children's documentation status. In fact, students who registered themselves in the Deferred Action for Childhood Arrivals (DACA) program are now fearful that information they provided to their school, state or the federal government could now be used to deport them.[12]

An important warning of what could happen in this country is provided by recent events in Great Britain, as cited in my written testimony. There, a national student data repository that was promised to be used solely for "analytical, statistical and research purposes" was accessed numerous times by the Home Office and the police for various purposes, including to curb "abuse of immigration control."[13]

Finally, I would like to mention that many SLDS are vulnerable to breaches because there are no specific security standards according to federal law, and few states mandate specific security requirements. As an example, Oregon has been shown to have very weak protections against breaches in the SLDS[14] according to two recent audits – one by the Inspector General's Office of the U.S. Department of Education[15] and one by the Oregon Secretary of State.[16]

I cannot overstate our coalition's concerns over student privacy, whether the data is held in a district, state or federal unit-record system. Even when use of data in the system is to be limited to research and/or accountability, it can be repurposed in the future to profile, stereotype, and discriminate against students, and/or be vulnerable to hackers.

On behalf of the members of our coalition, I hope you will consider the supporting information in this letter and include it in the formal record of the committee proceedings, and again urge you to strengthen student privacy and security protections before contemplating any legislation that might allow or encourage the federal government to expand its own collection of student data.

Sincerely,

Rachael Stickland
Co-founder and Co-Chair
Parent Coalition for Student Privacy

---

[12] *See* Alan Gomez, Colleges brace to shield students from immigration raids, USA Today, January 26, 2017, https://www.usatoday.com/story/news/2017/01/26/colleges-universities-shield-students-immigration-deportation-raids/96968540/

[13] *See* Kat Hall, Blighty's National Pupil Database has been used to control immigration, The Register, October 12, 2016, http://www.theregister.co.uk/2016/10/12/national_pupil_database_has_been_used_to_control_immigration/?mt=1476378123415

[14] *See* Betsy Hammond, Oregon Department of Education risked breach of private student data, audits find, The Oregonian, December 10, 2016, http://www.oregonlive.com/education/index.ssf/2016/12/oregon_department_of_education_3.html

[15] *See* the U.S Department of Education Office of Inspector General audit report "Protection of Personally Identifiable Information in Oregon's Statewide Longitudinal Data System," September 27, 2016, https://www2.ed.gov/about/offices/list/oig/auditreports/fy2016/a02p0007.pdf

[16] *See* the Oregon Secretary of State Audit Report, December 2016, http://sos.oregon.gov/audits/documents/2016-32.pdf

[Questions submitted for the record and their responses follow:]

MAJORITY MEMBERS:

VIRGINIA FOXX, NORTH CAROLINA, Chairwoman

JOE WILSON, SOUTH CAROLINA
DUNCAN HUNTER, CALIFORNIA
DAVID P. ROE, TENNESSEE
GLENN "GT" THOMPSON, PENNSYLVANIA
TIM WALBERG, MICHIGAN
BRETT GUTHRIE, KENTUCKY
TODD ROKITA, INDIANA
LOU BARLETTA, PENNSYLVANIA
LUKE MESSER, INDIANA
BRADLEY BYRNE, ALABAMA
DAVID BRAT, VIRGINIA
GLENN GROTHMAN, WISCONSIN
ELISE STEFANIK, NEW YORK
RICK W. ALLEN, GEORGIA
JASON LEWIS, MINNESOTA
FRANCIS ROONEY, FLORIDA
PAUL MITCHELL, MICHIGAN
TOM GARRETT, JR., VIRGINIA
LLOYD K. SMUCKER, PENNSYLVANIA
A. DREW FERGUSON, IV, GEORGIA
RON ESTES, KANSAS
KAREN HANDEL, GEORGIA

COMMITTEE ON EDUCATION
AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

MINORITY MEMBERS:

ROBERT C. "BOBBY" SCOTT, VIRGINIA,
Ranking Member

SUSAN A. DAVIS, CALIFORNIA
RAÚL M. GRIJALVA, ARIZONA
JOE COURTNEY, CONNECTICUT
MARCIA L. FUDGE, OHIO
JARED POLIS, COLORADO
GREGORIO KILILI CAMACHO SABLAN,
NORTHERN MARIANA ISLANDS
FREDERICA S. WILSON, FLORIDA
SUZANNE BONAMICI, OREGON
MARK TAKANO, CALIFORNIA
ALMA S. ADAMS, NORTH CAROLINA
MARK DESAULNIER, CALIFORNIA
DONALD NORCROSS, NEW JERSEY
LISA BLUNT ROCHESTER, DELAWARE
RAJA KRISHNAMOORTHI, ILLINOIS
CAROL SHEA-PORTER, NEW HAMPSHIRE
ADRIANO ESPAILLAT, NEW YORK

July 26, 2017

Dr. Diane Whitmore Schanzenbach
Director, The Hamilton Project
The Brookings Institution
1775 Massachusetts Avenue, NW
Washington, DC 20036

Dear Dr. Schanzenbach:

Thank you, again, for testifying before the Subcommittee on Early Childhood, Elementary, and Secondary Education at the hearing entitled "Exploring Opportunities to Strengthen Education Research While Protecting Student Privacy" on June 28, 2017.

As a follow-up to your testimony, please find enclosed additional questions submitted by a member of the Subcommittee for inclusion in the final hearing record. Please provide your written responses to Jake Middlebrooks with the Committee staff **no later than August 16, 2017**. He can be contacted at (202) 225-6558 should you have any questions about this request.

Sincerely,

Todd Rokita
Chairman
Subcommittee on Early Childhood,
Elementary, and Secondary Education

Rep. Phil Roe (R-TN)

1. As states have enacted privacy protections, what risks does Congress need to consider when potentially changing federal law in FERPA?

2. Are there considerations we need to take to address the unique needs of higher education students?

MAJORITY MEMBERS:

VIRGINIA FOXX, NORTH CAROLINA, *Chairwoman*

JOE WILSON, SOUTH CAROLINA
DUNCAN HUNTER, CALIFORNIA
DAVID P. ROE, TENNESSEE
GLENN "GT" THOMPSON, PENNSYLVANIA
TIM WALBERG, MICHIGAN
BRETT GUTHRIE, KENTUCKY
TODD ROKITA, INDIANA
LOU BARLETTA, PENNSYLVANIA
LUKE MESSER, INDIANA
BRADLEY BYRNE, ALABAMA
DAVID BRAT, VIRGINIA
GLENN GROTHMAN, WISCONSIN
ELISE STEFANIK, NEW YORK
RICK W. ALLEN, GEORGIA
JASON LEWIS, MINNESOTA
FRANCIS ROONEY, FLORIDA
PAUL MITCHELL, MICHIGAN
TOM GARRETT, JR., VIRGINIA
LLOYD K. SMUCKER, PENNSYLVANIA
A. DREW FERGUSON, IV, GEORGIA
RON ESTES, KANSAS
KAREN HANDEL, GEORGIA

COMMITTEE ON EDUCATION
AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

MINORITY MEMBERS:

ROBERT C. "BOBBY" SCOTT, VIRGINIA,
Ranking Member

SUSAN A. DAVIS, CALIFORNIA
RAÚL M. GRIJALVA, ARIZONA
JOE COURTNEY, CONNECTICUT
MARCIA L. FUDGE, OHIO
JARED POLIS, COLORADO
GREGORIO KILILI CAMACHO SABLAN,
NORTHERN MARIANA ISLANDS
FREDERICA S. WILSON, FLORIDA
SUZANNE BONAMICI, OREGON
MARK TAKANO, CALIFORNIA
ALMA S. ADAMS, NORTH CAROLINA
MARK DESAULNIER, CALIFORNIA
DONALD NORCROSS, NEW JERSEY
LISA BLUNT ROCHESTER, DELAWARE
RAJA KRISHNAMOORTHI, ILLINOIS
CAROL SHEA-PORTER, NEW HAMPSHIRE
ADRIANO ESPAILLAT, NEW YORK

July 26, 2017

Dr. Nathaniel Schwartz
Chief Research and Strategy Officer
Tennessee Department of Education
710 James Robertson Parkway
Nashville, TN 37243

Dear Dr. Schwartz:

Thank you, again, for testifying before the Subcommittee on Early Childhood, Elementary, and Secondary Education at the hearing entitled "Exploring Opportunities to Strengthen Education Research While Protecting Student Privacy" on June 28, 2017.

As a follow-up to your testimony, please find enclosed an additional question submitted by a member of the Subcommittee for inclusion in the final hearing record. Please provide your written responses to Jake Middlebrooks with the Committee staff **no later than August 16, 2017**. He can be contacted at (202) 225-6558 should you have any questions about this request.

We appreciate your contribution to the work of the Subcommittee.

Sincerely,

Todd Rokita
Chairman
Subcommittee on Early Childhood,
Elementary, and Secondary Education

Rep. Roe (R-TN)

1. Can you share some of the methods you use to secure student data?

MAJORITY MEMBERS:

VIRGINIA FOXX, NORTH CAROLINA, *Chairwoman*

JOE WILSON, SOUTH CAROLINA
DUNCAN HUNTER, CALIFORNIA
DAVID P. ROE, TENNESSEE
GLENN "GT" THOMPSON, PENNSYLVANIA
TIM WALBERG, MICHIGAN
BRETT GUTHRIE, KENTUCKY
TODD ROKITA, INDIANA
LOU BARLETTA, PENNSYLVANIA
LUKE MESSER, INDIANA
BRADLEY BYRNE, ALABAMA
DAVID BRAT, VIRGINIA
GLENN GROTHMAN, WISCONSIN
ELISE STEFANIK, NEW YORK
RICK W. ALLEN, GEORGIA
JASON LEWIS, MINNESOTA
FRANCIS ROONEY, FLORIDA
PAUL MITCHELL, MICHIGAN
TOM GARRETT, JR., VIRGINIA
LLOYD K. SMUCKER, PENNSYLVANIA
A. DREW FERGUSON, IV, GEORGIA
RON ESTES, KANSAS
KAREN HANDEL, GEORGIA

COMMITTEE ON EDUCATION
AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

MINORITY MEMBERS:

ROBERT C. "BOBBY" SCOTT, VIRGINIA,
Ranking Member

SUSAN A. DAVIS, CALIFORNIA
RAÚL M. GRIJALVA, ARIZONA
JOE COURTNEY, CONNECTICUT
MARCIA L. FUDGE, OHIO
JARED POLIS, COLORADO
GREGORIO KILILI CAMACHO SABLAN,
NORTHERN MARIANA ISLANDS
FREDERICA S. WILSON, FLORIDA
SUZANNE BONAMICI, OREGON
MARK TAKANO, CALIFORNIA
ALMA S. ADAMS, NORTH CAROLINA
MARK DESAULNIER, CALIFORNIA
DONALD NORCROSS, NEW JERSEY
LISA BLUNT ROCHESTER, DELAWARE
RAJA KRISHNAMOORTHI, ILLINOIS
CAROL SHEA-PORTER, NEW HAMPSHIRE
ADRIANO ESPAILLAT, NEW YORK

July 26, 2017

The Honorable Grover J. "Russ" Whitehurst, Ph.D.
Senior Fellow in Economic Studies, Center on Children and Families
The Brookings Institution
1775 Massachusetts Avenue, NW
Washington, DC 20036

Dear Dr. Whitehurst:

Thank you, again, for testifying before the Subcommittee on Early Childhood, Elementary, and Secondary Education at the hearing entitled "Exploring Opportunities to Strengthen Education Research While Protecting Student Privacy" on June 28, 2017.

As a follow-up to your testimony, please find enclosed additional questions submitted by a member of the Subcommittee for inclusion in the final hearing record. Please provide your written responses to Jake Middlebrooks with the Committee staff **no later than August 16, 2017**. He can be contacted at (202) 225-6558 should you have any questions about this request.

We appreciate your contribution to the work of the Subcommittee.

Sincerely,

Todd Rokita
Chairman
Subcommittee on Early Childhood,
Elementary, and Secondary Education

Rep. Roe (R-TN)

1. As states have enacted privacy protections, what risks does Congress need to consider when potentially changing federal law in FERPA?

2. Are there considerations we need to take to address the unique needs of higher education students?

[Dr. Schanzenbach responses to questions submitted for the record follow:]

Diane Schanzenbach
Brookings Institution
"Exploring Opportunities to Strengthen Education Research While Protecting Student Privacy"
June 28, 2017
Response to questions for the record from Rep. Phil Roe (R-TN)

1. **As states have enacted privacy protections, what risks does Congress need to consider when potentially changing federal law in FERPA?**

In the past decade, we have seen significant improvements in education policy and practice spurred by rigorous, relevant research conducted from state-level data. This is possible because compliance with federal and state privacy policies protects student privacy and data confidentiality while permitting cutting-edge research. I find it encouraging to see that so many of our nation's leaders recognize that research and privacy protections need not be at odds with one another. Congress can help states to adopt best practices to protect confidentiality while still partnering with researchers by reauthorizing FERPA and ESRA.

FERPA, in its current form or following reauthorization, affords students the level of privacy protection agreed to by Congress. FERPA applies to educational authorities that receive funding from the US Department of Education. Beyond FERPA, students are protected by several additional privacy laws at the federal and state level. Educational authorities in every state must comply with FERPA as well as applicable federal and state laws relating to privacy.

Reauthorizing FERPA does not displace states' capacity to make laws pertaining to student privacy. Compliance with federal privacy laws, such as FERPA, are a baseline from which states can determine whether additional protections are needed. If a state has more-stringent privacy laws on the books or enacts new legislation that goes beyond FERPA, those protections supersede FERPA.

2. **Are there considerations we need to take to address the unique needs of higher education students?**

My professional experience and expertise is in conducting research studies and engaging with practitioners using federal education surveys collected by the National Center for Education Statistics, as well as longitudinal state and district data systems that have the capacity to follow students over time from preschool to high school and sometimes through college and into the workforce. While the federal government supports states' longitudinal data systems, there are no student population-level data held by the federal government. This is the case whether one is discussing the K-12 or postsecondary systems.

Nevertheless, there is great value in supporting longitudinal data systems and in providing information to students to help them make good decisions about college. In order for our nation to lower barriers to college entry and provide useful information about colleges, courses of study, and career paths to students making life-changing decisions, the federal government should continue to improve on the College Scorecard by collecting and making public critical information about college cost, quality, and outcomes for students. While the primary beneficiaries of these data would be students and their parents, in addition researchers, taxpayers, and state education leaders stand to benefit. Better data leads to better research and program evaluation, perhaps resulting in reforms to improve federal investments in higher education.

[Dr. Schwartz responses to questions submitted for the record follow:]

BILL HASLAM
GOVERNOR

STATE OF TENNESSEE
DEPARTMENT OF EDUCATION
NINTH FLOOR, ANDREW JOHNSON TOWER
710 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243-0375

CANDICE MCQUEEN
COMMISSIONER

Dear Chairman Rokita:

As follow-up to the June 28th hearing entitled "Exploring Opportunities to Strengthen Education Research While Protecting Student Privacy," Representative Roe asked: "Can you share some of the methods you use to secure student data?"

The Tennessee Student Data Accessibility law outlines several requirements for student data protection. I have attached that statute, T.C.A. § 49-1-703, as Attachment A for your subcommittee's review.

Within the department of education, we take a number of steps to ensure data security. I have listed some of these below.

- All student data that is moved between information systems (data in motion) is done over a secure sockets layer (SSL) encrypted connection.
- All student data in a saved state (data at rest) resides in commercial grade, Oracle, and Microsoft database systems that support encryption at rest.
- All database systems implement industry best practices for role-level schema security, general configuration, and patch management.
- All server infrastructure implements threat detection analytics, end-point protection, and a patch management strategy.
- All databases reside behind robust firewall infrastructure and no database is directly accessible via an external IP address, pipe or port.
- User access to databases is granted on a need-to-know basis with protocols in place for granting and revoking user access.
- User access is implemented via a secure token service with a claims-based authorization model.
- Multi-factor authentication (MFA) is used to support secure user login.
- Passwords are implemented based on industry best practices for complexity and change frequency.
- All external data center facilities (i.e., those of SaaS vendors) contractually must conform to SOC and FEDRAMP standards for data security.
- All vendors are contractually obligated implement policies for:
    a. data retention and disposition,
    b. backup and recovery/disaster recovery, and
    c. incident response.
- All data systems and applications are subjected to penetration testing prior to going live.

When data is shared for research purposes within the strictures of the Family Educational Rights and Privacy Act of 1974 (FERPA) and Tennessee code, researchers must sign either a Memorandum of Agreement or a contract that includes a number of specific provisions around data security. The data security section of the department's Memorandum of Agreement is included here as Attachment B.

In my testimony, I referred specifically to research conducted through the Tennessee Education Research Alliance (TERA). TERA's data system provides a detailed example as to how the data security provisions referenced in Attachment B are operationalized by Tennessee education researchers.

Data are first provided to TERA by the Tennessee Department of Education through secure FTP. Data are then stored and cleaned on three computers without internet connections in a secure data room in the Wyatt Center on the Peabody campus of Vanderbilt University. Access to the data room is limited to those who have signed affidavits declaring their understanding of requirements for data security in accordance with FERPA and Tennessee code.

Once cleaned and de-identified, the data are loaded onto a system housed in Vanderbilt's Advanced Computing Center for Research and Education (ACCRE). ACCRE implements numerous security measures in order to maintain the privacy of user data. For example, firewalls filter cluster access from external hosts, passwords authenticate user login, and file permissions control data access on the user and group levels. File encryption software is available on the cluster and is applied by TERA on a file-by-file basis for added security. Only researchers who have signed affidavits declaring their understanding of requirements for data security in accordance with FERPA and Tennessee code and been approved by the Tennessee Department of Education's Research Review Committee are granted access to the data. Additionally, researchers are only granted access to the specific data for which they have received approval.

Please let me know if you have any further questions.

Sincerely,

Nathaniel Schwartz
Chief Research and Strategy Officer

Attachment A: T.C.A. § 49-1-703

The state board of education shall:
(1) Create, publish and make publicly available a data inventory and dictionary or index of data elements with definitions of individual student data fields currently in the student data system along with the purpose or reason for inclusion in the data system;
(2) Develop, publish and make publicly available policies and procedures to comply with FERPA, § 10-7-504 and other relevant privacy laws and policies. These policies and procedures shall, at a minimum, require that:
(A) Access to student and de-identified data in the student data system is restricted to:

(i) The authorized staff of the department and the department's contractors who require access to perform their assigned duties;

(ii) LEA administrators, teachers, school personnel and the LEA's contractors who require access to perform their assigned duties;

(iii) Students and their parents; provided, however, that a student or the student's parents may only access the student's individual data;

(iv) The authorized staff of other state agencies as permitted by law; provided, however, that within sixty (60) days of providing such access, the department shall provide notice of the release to the state board, the education committee of the senate, and the education administration and planning committee of the house of representatives, and post such notice on the department's web site;

(v) Parties conducting research for or on behalf of the department or an LEA; provided, that such access is granted in compliance with FERPA and other relevant state and federal **privacy** laws and policies and that the department shall provide notice of the release to the state board, the education committee of the senate, and the education administration and planning committee of the house of representatives, and post such notice on the department's web site;

(vi) Appropriate entities in compliance with a lawfully issued subpoena or court order; or

(vii) Appropriate officials in connection with an interagency audit or evaluation of a federal or state supported education program;

(B) The department uses only aggregate data in public reports or in response to public record requests in accordance with subdivision (3);

(C) **(i)** The commissioner develops criteria for the approval of research and data requests from state and local agencies, the general assembly, researchers and the public; provided, however, that:

(a) Unless otherwise approved by the state board or permitted in this part, student data maintained by the department shall remain confidential; and

(b) Unless otherwise permitted in this part or approved by the state board to release student or de-identified data in specific instances, the department may only use aggregate data in the release of data in response to research and data requests;

(ii) Unless otherwise approved in this part or by the state board, the department shall not transfer student or de-identified data deemed confidential under subdivision (2)(C)(i)(*a*) to any federal agency or other organization or entity outside the state, except when:

(a) A student transfers out of state or an LEA seeks help with locating an out-of-state transfer;

(b) A student leaves the state to attend an out-of-state institution of higher education or training program;

(c) A student registers for or takes a national or multistate assessment;

(d) A student voluntarily participates in a program for which such data transfer is a condition or requirement of participation;

(e) The department enters into a contract that governs databases, assessments, special education or instructional supports with an out-of-state vendor; or

(f) A student is classified as "migrant" for federal reporting purposes; and

(D) Students and parents are notified of their rights under federal and state law;
(3) Develop a detailed data security plan that includes:

(A) Guidelines for authorizing access to the teacher data system and to individual teacher data including guidelines for authentication of authorized access;

(B) Guidelines for authorizing access to the student data system and to individual student data including guidelines for authentication of authorized access;

(C) **Privacy** compliance standards;

(D) **Privacy** and security audits;

(E) Breach planning, notification and procedures; and

(F) Data retention and disposition policies;

(4) Ensure routine and ongoing compliance by the department with FERPA, § 10-7-504, other relevant **privacy** laws and policies, and the **privacy** and security policies and procedures developed under the authority of this part, including the performance of compliance audits;

(5) Ensure that any contracts that govern databases, assessments or instructional supports that include student or de-identified data and are outsourced to private vendors include express provisions that safeguard **privacy** and security and include penalties for noncompliance; and

(6) Notify the governor and the general assembly within sixty (60) days of the following:

(A) Any new student data fields included in the state student data system;

(B) Changes to existing data collections required for any reason, including changes to federal reporting requirements made by the United States department of education;

(C) Any exceptions granted by the state board in the past year regarding the release or out-of-state transfer of student or de-identified data accompanied by an explanation of each exception; and

(D) The results of any and all **privacy** compliance and security audits completed in the past year. Notifications regarding **privacy** compliance and security audits shall not include any information that would itself pose a security threat to the state or local student information systems or to the secure transmission of data between state and local systems by exposing vulnerabilities.

Attachment B: Data Security Provision of Tennessee Research Memorandum of Agreement

The [PARTY] agrees to receive confidential data from TDOE, and to observe the following security provisions when transferring, storing, analyzing and reporting data. These provisions set forth are subject to Federal and State confidentiality laws and ensure that the required confidentiality of personally identifiable information is always maintained.

Storage and Transfer

6.1 The data must be stored where ***only*** the MOA-designated primary and secondary investigator(s) may access the data.
6.2 The location of ***all copies*** of the data must be carefully tracked. The primary and secondary investigators will monitor the access logs for the database for activity in violation of this Data Confidentiality and Security Agreement Form
6.3 All data transfers will be encrypted with a minimum of 128 bits. Source data files will be stored in a secured location with access limited to system administrators and primary investigators
6.4 Data files ***must*** remain secure throughout the duration of data storage
6.5 All data will be housed in firewall protected system software. Intrusion detection efforts must be in place for the system components
6.6 Security notices affecting the system software must be monitored and patches applied to minimize the risk of security breach

Usage

6.7 All Primary and Secondary Investigators must sign and execute this MOA or the Tennessee Data Confidentiality and Security Agreement
6.8 Data may be accessed ***only*** by primary and secondary investigator(s) that have signed this MOA or the Tennessee Data Confidentiality and Security Agreement
6.9 Data ***may not*** be shared with any other individuals outside those designated as the primary and secondary investigator(s) in the MOA
6.10 Data may be used ***only*** for analyses that respect privacy and confidentiality of all concerned parties including students, teachers, classrooms, schools, districts, intermediate school districts and the State of Tennessee
6.11 Data may ***only*** be used for the purposes of answering the research questions and/or hypotheses presented in the Project Overview and Statement of Work
6.12 Publically available discussions, presentations and reports based upon the confidential data ***may not*** include information that would make it possible to identify a student, teacher, classroom, school, district, intermediate school district or the State of Tennessee unless specific permission has been granted in writing to do so
6.13 Internal discussions and reports should protect the privacy, anonymity and confidentiality of all concerned parties if there is any reasonable possibility that the internal document may become publically available
6.14 Internal documents that contain any identifying information must clearly be marked "confidential—for internal use only"

6.15 In any instances where populations may include only a few individuals, all primary and secondary investigators will apply statistical cutoff procedures to ensure that confidentiality is maintained. The investigators' system will block any aggregate results with a statistical cutoff in which fewer than five persons might be disclosed. Other measures such as reporting percentages and ranges of data and avoiding the reporting of counts will be used as well to ensure statistical security

6.16 The handling of all data will, at all times, adhere to the Family Educational Rights and Privacy Act (FERPA)

Disposal

6.17 The data ***must*** be destroyed in accordance with the date designated for destruction in the signed MOA

6.18 If an extension on the data destruction deadline is needed, the TDOE Internal Review Board ***must*** be contacted, in writing, to approve an extension

6.19 A certificate of destruction will be sent via US mail to the TDOE Internal Review Board on the date of the data loan expiration

Data Release Incidents

6.20 Any instances of unauthorized disclosure of personally identifiable information that come to the attention of the investigators must be reported to the TDOE within twenty-four (24) hours of being brought to the attention of the investigators

6.21 Inappropriately releasing data from a student, teacher or other personal record, whether through negligence or intent, will be subject to potentially permanent loss of access to TDOE data and records

6.22 Any agents, other entities, or primary or secondary investigators who violate this MOA, whether through negligence or intent, will not have access to any TDOE student data for five years as required by FERPA. All violations will be reported to the appropriate federal and state enforcement agencies

[Dr. Whitehurst responses to questions submitted for the record follow:]

Questions to Grover Whitehurst from Representative Roe (R-TN):

1. "As states have enacted privacy protections, what risks does Congress need to consider when potentially changing federal law in FERPA?"
2. "Are there considerations we need to take to address the unique needs of higher education students?"

Answers from Grover Whitehurst:

1. Two challenges are paramount in protecting the privacy of student education records, and in coordinating FERPA with state privacy laws. The first is that student education records are increasingly generated through student interactions with digital materials delivered through the web, in many cases via providers that are out-of-state or even out-of-country. The second is that the repositories of these digital education records as well as repositories of traditional school administrative data such as student test scores are subject to accidental as well as intentional data breeches.

   The appropriate division of responsibility between federal and state authorities to threats to the privacy of student data is for the U.S. Congress to address the following four broad questions: what constitutes a student record; when is permission needed to access such a record; who is responsible for maintaining the security of systems of privacy protected student records; and what are the penalties for both intentional and inadvertent violations of the privacy provisions of FERPA? States would have the responsibility for legislative and regulatory action to fill in all the details that are relevant to creating, using, and protecting the privacy of student records. These would include such things as the triggers for breech notifications, restrictions on the use by vendors of information derived student interactions with digital education materials, the requirements of data security plans, and so forth.

   A model in which the federal government addresses broad issues whereas states sweat the details has the downside in an increasingly digital world of creating a daunting patchwork across states of differing laws and regulations regarding student data. To address this, Congress could provide funding to states through statewide longitudinal database grants to enter into voluntary compacts among states to develop common approaches to laws and regulations pertaining the privacy of student records. The more commonality among states in what they require with respect to the details of protecting student records, the easier it will be for a vibrant market for digital learning materials to thrive.

2. In principle, the other difference in the scope and application of FERPA in postsecondary vs. K-12 education is that in the former it is the student rather than the parent who is the responsible agent with regard to the protections and permissions required of FERPA. There is an argument to be made for providing parents of dependent students with access to their children's student records based on the fact that those children are still financially dependent on their parents and it is their parents who are helping to cover the costs of attendance. It is also often the parents who are in the best position to intervene with a student who is not making adequate progress towards graduation. A large proportion of

parents are shocked when they first find out that they have no access to their dependent child's college grades or course enrollments by virtue of federal law.

[Whereupon, at 11:06 a.m., the subcommittee was adjourned.]

○