

# EducationCounsel

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## Memorandum

To: Marshall A. Hill  
Executive Director  
National Council for State  
Authorization Reciprocity Agreements (NC-SARA)

From: Steven Y. Winnick

Date: March 16, 2017

Re: Reporting Small Cell Size Data to NC-SARA

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This memorandum responds to your February 28, 2017, memorandum to Art Coleman requesting advice regarding the consistency with the Family Educational Rights and Privacy Act (FERPA; 20 U.S.C. §1232g) of a proposed revision in NC-SARA's collection of data from postsecondary institutions. Data are collected on the number of students who reside out-of-state and who are enrolled in the institution via distance education. The data show in aggregate form the states of residence of these students.<sup>1</sup> The proposed revision on which you seek advice is to instruct institutions to report actual enrollment totals for each state without masking or suppressing small cell size data for states with fewer than ten students, subject to an important exception discussed below. In the past, institutions were instructed to report zero students for each such state, so as to mask these small cell size data and avoid the possible indirect personal identification of students within these cells. However, your memorandum indicates that the prior policy resulted in many reports of zero students in all or many states, thereby undermining the purposes for which the data were disclosed to NC-SARA. For the reasons described below, we advise that your proposed change in collecting small cell-size data, subject to the exception described, complies with FERPA.

As discussed in an opinion letter of May 5, 2014, that we provided to you, FERPA prohibits educational institutions funded by the U.S. Department of Education (USED) from disclosing personally identifiable information from students' education records without the consent of a parent or, in the case of postsecondary students, of the student, unless the disclosure comes within a list of authorized disclosures in the law. FERPA regulations define "personally identifiable information" as including but not limited to the student's name; the name of the student's parent or other family members; other named identifiers; and "other information that, alone or in combination, is linked or linkable to a specific person that would allow a reasonable person in the school community, who does not have knowledge of the relevant circumstances, to identify the student with reasonable certainty. . . ." (34 CFR §99.3)

As we previously advised you in our May 5, 2014, opinion letter, while there is not a clear answer to this issue, particularly because USED has not addressed what the "school community" means with reference to distance education, we believe there is a good argument that the disclosure of the subject enrollment data disaggregated by the student's state of residence would not make the information linkable to an individual student by a reasonable person in the school community. Interactions among students are likely to be limited in a distance education program and it seems unlikely that persons in the school

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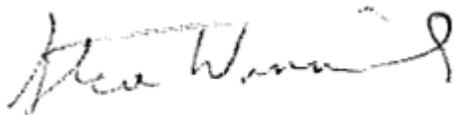
<sup>1</sup> Your memorandum indicates that contrary to previous plans, the data will not be disaggregated by program of enrollment.

community would be able to identify the individual student based on this information.<sup>2</sup> The reporting of numbers of distance education students by state therefore may not involve a disclosure of personally identifiable information under FERPA.

Your memorandum indicates an intent to instruct institutions to report actual student data by state without masking or suppressing data for small cell sizes, subject to the exception that an institution, in reporting data to NC-SARA, should apply its own established policies for masking or suppressing small cell size data if **both** of the following circumstances apply:

1. If the postsecondary institution believes that the disclosure of the small cell size information, when linked to other information available in the school community, will enable reasonable persons in the school community who do not have knowledge of the specific circumstances to identify the student; and
2. If disclosure of the information is not covered by the institution's directory information policy, or students have opted out of that policy.

Given the absence of precedents on this issue, and consistent with our prior opinion letter, we believe that the inclusion of these cautionary exceptions is advisable to assure compliance with FERPA.



Cc: Art Coleman  
Terri Taylor

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<sup>2</sup> Employees may have specialized knowledge of the student by virtue of their jobs, but that would not bring the disclosure within the FERPA definition of personally identifiable information.