

## Case Study #3: Enforcement

### *Illustrating FPCO imposing a 5-year ban*

#### About PTAC

The U.S. Department of Education established the Privacy Technical Assistance Center (PTAC) as a “one-stop” resource for education stakeholders to learn about data privacy, confidentiality, and security practices related to student-level longitudinal data systems and other uses of student data. PTAC provides timely information and updated guidance through a variety of resources, including training materials and opportunities to receive direct assistance with privacy, security, and confidentiality of student data systems. More PTAC information is available at <https://studentprivacy.ed.gov>.

PTAC welcomes input on this document and suggestions for future technical assistance resources relating to student privacy. Comments and suggestions can be sent to [PrivacyTA@ed.gov](mailto:PrivacyTA@ed.gov).

#### Purpose

In December 2011, the U.S. Department of Education (Department or we) released new regulations governing the Family Educational Rights and Privacy Act (FERPA), ([76 FR 75604 \(Dec. 2, 2011\)](#)), and supplemental non-regulatory guidance. We are providing the following case study to illustrate how specific provisions of FERPA may be implemented. This case study uses fictional agencies, does not address individual circumstances, and does not consider additional legal requirements that may be required under other Federal, state, or local laws.

We will release additional case studies, and welcome suggestions for future topics. Comments and suggestions can be sent to [PrivacyTA@ed.gov](mailto:PrivacyTA@ed.gov).

#### Background

The state education agency (SEA) in State X, acting on behalf of the State’s local education agencies (LEAs), enters into a written agreement with a research organization that designates the research organization as its authorized representative and otherwise meets the requirements for written agreements under FERPA’s audit and evaluation exception. The agreement allows the research organization to use the SEA’s data to compare the effectiveness of several different state-supported college preparation programs used in different LEAs. Specifically, the research organization wants to evaluate whether Advanced Placement (AP) or International Baccalaureate (IB) programs better prepare students for success.

The SEA takes steps to ensure that the research organization uses the data appropriately, selecting appropriate methods from [Guidance for Reasonable Methods and Written Agreements](#). The research organization uses the data and produces a report that makes important conclusions about State X’s AP and IB programs. The SEA, pursuant to its agreement with the research organization, reviews and approves the tables in the report prior to publication to verify that the cell sizes are sufficiently large so that the tables do not reveal information about individual students.

The SEA’s written agreement with the research organization prohibits the research organization from both using the data for any purpose other than the specified evaluation, and sharing it with other parties. Some months after the publication of the final report, however, the SEA discovers that the research organization has breached the terms of the written agreement and shared the confidential data with another researcher. The SEA discovers this because the researcher contacted the SEA to ask questions about the data.

## What does the SEA do?

As required by FERPA, the SEA promptly requires that the second researcher destroy the data file received from the research organization and follows up with the researcher to obtain confirmation of destruction. The SEA also follows best practices by auditing the research organization's data-handling practices to make sure that no other violations have taken place, and pursues available contractual remedies against the research organization. The SEA also elects to promptly notify the Family Policy Compliance Office (FPCO) of both the FERPA violation and the SEA's responsive actions.

## What does the U.S. Department of Education do?

FPCO investigates the FERPA violation to determine whether the SEA took reasonable methods to ensure to the greatest extent practicable that the research organization complied with FERPA. In this instance, FPCO notes the mitigating factors that the SEA did not try to hide the violation, and that the SEA notified FPCO. FPCO's investigation determines that the SEA took reasonable methods to ensure the proper protection of the data by the research organization. FPCO further determines that the research organization acted contrary to the terms of its written agreement with the SEA by sharing data with the unauthorized researcher. Accordingly, FPCO imposes a 5-year ban on the research organization. The ban provides that the SEA is not permitted for 5 years to act on behalf of the affected LEAs to share education records with the offending research organization. This ban is appropriate because the SEA was acting on behalf of the LEAs that supplied the data to the statewide longitudinal data system when it shared data with the research organization.

Any enforcement actions taken by FPCO are in addition to any contractual remedies the SEA may seek under the terms of its written agreement with the research organization.